Breaking News

The International Seminar on Competition Law, Policy and Enforcement was held on 17 September in Beijing (China Competition Research Centre, 20 September 2010.)

This seminar was jointly hosted by China’s Ministry of Commerce (MOFCOM), the Organisation for Economic Co-operation and Development (OECD) and the Asian Development Bank (ADB). It brought together policymakers and competition law enforcers from China, France, South Africa, OECD and ADB to discuss the importance of competition for China’s economic development, drawing on Chinese and international experiences. Judges from China’s Supreme People’s Court and officials from the sixteen ministries and institutions of China’s State Council attended the seminar.

The seminar organizers recognised that effective competition policy can significantly contribute to overall economic performance through increased productivity and growth. Competition policy is particularly important for markets in transition, as it promotes efficiency, growth and employment for the benefit of all. Competition policy is a key government tool and is not significantly limited to competition law enforcement. Sound competition principles underpin wider government policies and ensure that the benefits of competition are felt throughout the economy.

“Today’s conference may be viewed as a turning point and a milestone, because this is the first time that we have been able to bring the subject of competition policy and law to a broad range of senior officials in the Chinese Government”, Mr Jeremy Hovland, General Counsel of ADB, said in his opening speech.

During the seminar, Mr Shang Ming, Director General of the Anti-Monopoly Bureau of MOFCOM, reviewed the Anti-Monopoly Law (AML) merger control regime and key decisions made by MOFCOM. According to Mr Shang, from August 2008 when the AML came into effect to the end of August 2010, MOFCOM had received 145 merger notifications and completed reviews of 136 cases, of which 125 cases were cleared unconditionally and four notifications were withdrawn by the notifying parties. To date, six transactions were conditionally cleared and one transaction was prohibited.

Professor Xiaoye Wang of the Chinese Academy of Social Sciences reviewed the AML rules on monopoly agreements as well as on abusive behaviour of dominant undertakings through analysing pricing behaviour of public utilities and abusive behaviour such as tying and refusal to deal, etc.

When discussing the enforcement of competition law, Mr Bruno Lasserre, President of the French Autorité de la Concurrence (French Competition Authority), introduced the French experience of competition achievement in the telecommunications sector. Mr David Lewis, former Chairman of the Competition Tribunal of South Africa, discussed the heads of the fourteen ministries and institutions below are the members of China’s Anti-Monopoly Commission, a high-level inter-ministerial consultative and coordinating body established pursuant to the Anti-Monopoly Law (AML). These ministries and institutions are: (1) MOFCOM, (2) National Development and Reform Commission (NDRC), (3) State Administration for Industry and Commerce (SAIC), (4) State-owned Assets Supervision and Administration Commission, (5) Ministry of Industry and Information Technology, (6) Ministry of Transport, (7) Ministry of Finance, (8) Ministry of Supervision, (9) State Intellectual Property Office, (10) China Banking Regulatory Commission, (11) China Securities Regulatory Commission, (12) China Insurance Regulatory Commission, (13) State Electricity Regulatory Commission, and (14) Legislative Affairs Office of the State Council.

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competition policy and development and provided examples of the impact of competition on
the cement and pharmaceutical sectors in South Africa.

Regarding competition policy in the modern economy, Ms Hilary Jennings, Head of
Outreach, the Competition Division, OECD, explained the OECD Competition Committee’s
role in defining and shaping international best practices in competition policy and reviewed
the benefits of competition law by drawing on the experiences of Australia, India, Japan,
and Mexico. Ms Jennings also discussed enforcing competition rules in a time of crisis.
When discussing the fact that sometimes laws and regulations hold back competition
unnecessarily she pointed out that an evaluation of competitive effects is helpful when
designing regulations. Ms Jennings then introduced the OECD Competition Assessment
Toolkit. The toolkit has been designed to help evaluate whether a law or regulation unduly
restricts competition with a view to identifying ways to achieve the objectives of laws
and regulations with the least harm to competition. Considering that industrial policy and
regulation still plays an important role in China, the OECD Competition Assessment Toolkit is
of particular relevance to China’s further transition to a modern market economy.

Finally, the keynote speakers and panelists discussed competition law enforcement and
competition advocacy, with a particular emphasis on issues arising from competition law
enforcement in key industry sectors and the role of competition authorities in working with
other government agencies to deliver improved competition outcomes.

I. Laws and Policies

1. State Council: Opinions on the Promotion of Mergers and Restructuring of
   Enterprises (《国务院关于促进企业兼并重组的意见》) (28 August 2010)

China’s State Council promulgated the Opinions on the Promotion of Mergers and
Restructuring of Enterprises (Opinions) on 28 August 2010 and published the Opinions on
the Central Government website on 7 September. The Opinions state that certain industries
and sectors in China have serious redundant capacities and repetitive projects, low market
concentration, and weak independent innovation and competitiveness: the promotion of
mergers and restructuring is therefore crucial for the purpose of reforming enterprises,
adjusting industrial structure, strengthening the resistance of enterprises to risk, and
achieving sustainable development.

The Opinions focus on mergers and restructuring in key industries, such as the steel,
automobile, aluminum, cement, machinery and rare earth industries. They call for the
relaxation of entry by private capital into monopolistic industries. They also encourage
private capital entry into infrastructure, public and social sectors, as well as financial
services, and encourage foreign participation in domestic enterprise mergers and
restructuring. The Opinions emphasize that mergers and restructuring should be market-
driven and “forced mergers” (a term referring to transactions initiated through administrative
orders) should be avoided. The Opinions stipulate that mergers and acquisitions (M&As)
that reach statutory filing thresholds will be subject to merger reviews, and the government
will establish and improve a system for national security reviews of M&As of domestic
enterprises by foreign investors. The Opinions also state that a unit coordinating mergers
and restructuring led by the Ministry of Industry and Information Technology will be
established within the State Council. A table showing the division of responsibilities between
ministries in the promotion of M&As is attached to the Opinions.

Link:

II. Cases

1. Chinese Lawyers Plan Class Litigation against the World’s Air Cargo
   Carriers (National Business Daily, 3 September 2010)

Damage claims by Chinese freight forwarders against major air cargo carriers will be initiated
soon, Hao Junbo, a lawyer of Lehman, Lee & Xu in Beijing told journalists.
Hao said that around 15 to 20 major international airlines including British Airways, Air France-KLM, Korean Air, and Japan Airlines have been under investigation by the European Commission and the US Department of Justice since 2006 for alleged price fixing activities in the air cargo sector.

“The cartel lasted from 1999 to 2006 and air cargo charges were rapidly rising around the world in those years as a result of the cartel. The cartel caused billions of dollars loss to freight forwarders and individual consumers. According to the publicly available information, 15 airlines have already pleaded guilty to price fixing in the USA and criminal fines were imposed totalling more than USD 1.6 billion”, he said.

Hao said he was notifying Chinese freight forwarders who were direct or indirect clients of the relevant air cargo carriers during the cartel period and will bring class litigation in “the most appropriate forum” on behalf of these forwarders if a pre-trial settlement cannot be reached.

Link:

Background information:

Article 50 of the AML entitles individuals and entities to bring private actions in respect of monopolistic conduct, including restrictive agreements, abuse of dominance and anti-competitive mergers, and to claim damages. The procedural aspects of private antitrust litigation are governed by China’s Civil Procedure Law, according to which multiple claimants can bring representative actions to the courts. A representative action refers to the situation where there is a large number of participants involved in an action and the parties elect to be represented by representative plaintiffs or defendants to carry on with the litigation on their behalf. If the number of litigants is not determined when the case is accepted, the court may issue a public notice and claimants can join the litigation by registering with the court.

China’s Supreme People’s Court is finalizing the judicial interpretations in relation to civil litigation brought under the AML that will provide detailed guidance on private antitrust litigation in China. It will be interesting to see how the air cargo case develops.

III. News of the Anti-Monopoly Enforcement, Agencies and the Courts

1. Ten Private Suits have been accepted by the Courts since the Anti-Monopoly Law (AML) came into effect; The Supreme People’s Court is finalizing judicial Interpretations on the trial of civil lawsuits brought under the AML (Legal Daily, 30 August 2010; Caixin Online, 13 September 2010)

China’s Supreme People’s Court is finalizing the judicial interpretations of civil procedures for private lawsuits brought under the AML, according to Mr Kong Xiangjun, Chief Justice of the Intellectual Property Tribunal, and Mr He Zhonglin, Presiding Judge of the Competition Bench of the Intellectual Property Tribunal of the Supreme People’s Court. According to Mr Kong and Mr He, the draft interpretations cover issues such as the scope of claims, jurisdictions, qualified plaintiffs, remedies, the finding of monopolistic conduct, the relationship of administrative enforcement and private enforcement, the relationship of the protection of intellectual property and antitrust, etc.

In a co-authored article written for the recently published Research Report on China’s Competition Policy and Law 2010 (《中国竞争政策与法律研究报告(2010年)》), Mr Kong and Mr He analysed the trends and features of the ten private suits that have been accepted by China’s courts since the AML came into force in August 2008. Among the ten cases, nine cases challenged alleged abuse of dominant market positions and one involved an alleged monopoly agreement; half of the cases involved new technologies; around one-third of cases were settled or withdrawn. In cases where judgments were rendered, the claims were all dismissed because the plaintiffs failed to prove the relevant markets,
the defendants’ dominant position, or that the defendants abused dominant positions. Mr Kong and Mr He emphasized that rules of evidence, especially the standard of proof and the burden of proof, are challenges that call for further consideration. Among the ten cases, the Beijing court accepted six cases, two of which were referred to Zhejiang court. The Shanghai court accepted one case while the Chongqing court accepted two cases, and the Zhejiang court accepted one case and two referrals.

Links:
http://www.legaldaily.com.cn/bm/content/2010-08/30/content_2264287.htm?node=20733 (in Chinese)

2. Top State-Owned Enterprises Trained on the AML (MOFCOM, 31 August 2010)

A training course on the AML for top state-owned enterprises was held by China’s anti-monopoly enforcement agencies including the Anti-Monopoly Bureau of the Ministry of Commerce (MOFCOM), the Price Supervision Department of the National Development and Reform Commission (NDRC) and the Competition Law Enforcement Bureau of the State Administration for Industry and Commerce (SAIC), together with the Policy and the Law Department of the State-owned Assets Supervision and Administration Commission (SASAC) in Beijing on 30 and 31 August. More than 70 representatives from legal and other relevant departments from approximately 40 central state-owned enterprises attended the training. Mr Shang Ming and Mr Zheng Wen, Director General and Deputy Director General of the Anti-Monopoly Bureau, gave presentations at the training course.


3. SAIC to Finalize Guidelines and Implementing Regulations accompanying the AML; Latest Statistics on MOFCOM’s Merger Review (China Business Network, 10 September 2010)

An official from SAIC said on 10 September at the 14th China International Fair for Investment and Trade in Xiamen that, to implement the AML, SAIC is finalizing the Measures on the Prohibition of Monopoly Agreements, the Measures on the Prohibition of Abuse of Dominant Market Position, and the Guidelines on Anti-Monopoly Enforcement in Relation to Intellectual Property.

At the same event, another MOFCOM official said that from 1 August 2008 to the end of August 2010, MOFCOM has accepted 145 merger notifications and completed reviews of 136 cases pursuant to the AML. Four notifications were withdrawn by the notifying parties.


4. China Ensures Price Regulation during Holidays (NDRC, 9 September, Xinhua, 10 September 2010)

NDRC recently urged authorities nationwide to step up supervision to stabilize prices in food, transportation and tourism during the upcoming Mid-autumn Festival holiday (22 to 24 September) and the National Day holiday (1 to 7 October). Focus should be attached to cracking down on price rigging, including circulating misleading or false information about price hikes, commodity hoarding or forcing up the price of grain, cooking oil, meat, eggs and dairy products, said an official from the NDRC. The official also asked involved departments to ramp up measures to regulate prices of public transportation and in tourism industries, while curbing arbitrary price hikes and irregular charges. Complaints and reports from the public will be accepted via a hotline phone number “12358”, said the official.
5. MOFCOM, NDRC and SAIC held Meeting to Advocate Competition Policy and the AML (MOFCOM, 13 September 2010)

China’s anti-monopoly enforcement agencies, including the Anti-Monopoly Bureau of MOFCOM, the Price Supervision Department of NDRC and the Competition Law Enforcement Bureau of SAIC, held a meeting to advocate competition policy and the AML on 10 September in Xiamen. Officials of the three agencies delivered speeches on relevant issues of the AML. Representatives of top state-owned enterprises, leading local enterprises, and significant foreign investment enterprises took part in the meeting.

6. MOFCOM is Monitoring BHP Billiton’s Bid for Potash (MOFCOM; Wall Street Journal, 15 September 2010)

Mr Yao Jian, spokesman of MOFCOM, said at the ministry’s monthly press conference that MOFCOM would pay close attention to BHP Billiton’s bid for the Canadian fertilizer company Potash Corp. China depends on imported potash and the country’s dependence on imported potash was 55 per cent in 2008. The rate decreased to 25 per cent in 2009. “Should the parties notify the transaction to MOFCOM, MOFCOM will review the transaction pursuant to the Anti-Monopoly Law”, Yao said.

IV. Central and Local Government News

1. China Promises Larger Role in IPR Protection; Intellectual Property Rights Protection Improving in China (Xinhua, 5 and 6 September 2010)

China’s intellectual property rights (IPR) authorities vowed to play a larger role in the global cause of IPR protection while being more responsible to innovators and the public. The State Intellectual Property Office (SIPO) Director Tian Lipu made the pledge at a press conference held to recognize the 25th anniversary of Sino-EU cooperation on IPR protection on 4 September. Tian said that China and the EU, as two major economies with close trade relations, should further co-operate to create a better environment to encourage and protect innovation in the business world. Commemorations of the anniversary, held at the Shanghai World Expo, also included a demonstration of a real-world IPR enforcement case in a moot court setting.

2. China’s Industries Face Merger, Acquisition Push (Xinhua News Agency, 6 September 2010)

China’s government has laid out plans to promote industrial mergers and acquisitions in a bid to accelerate economic restructuring and increase industrial competitiveness. The sectors involved include automobiles, steel, cement, machinery, rare earths and
aluminum. This was announced in a statement from the State Council on its website www.gov.cn, Monday, 6 September. Some industries that face replicated construction, low concentration, weak self-innovation and competitiveness needed consolidation through mergers and acquisitions. The government will scrap rules that have restricted cross-regional mergers and acquisitions, and encourage private investment in authorized sectors and allow private capital to take greater stakeholdings in companies. The government will also step up the reform of monopolistic industries and promote the entry of private capital through mergers and acquisitions.

Link:

3. China Unveils Plans to Encourage Industrial Relocations (Xinhua, 6 September 2010)

China's government has unveiled plans to encourage low-end industries to relocate from the country's coastal areas to inland provinces, as part of its efforts to accelerate industrial restructuring and the transformation of the nation's economic growth model. Transferring low-end industries from coastal areas to central and western regions would not only accelerate the pace of industrialization and urbanization in those underdeveloped regions, but also help coastal areas increase their value in China's economic life, it was announced in a statement from the State Council on its website, www.gov.cn, Monday, 6 September.

Link:

4. China May Allow Opening of Wholly Foreign Owned Hospitals, News Reports (Bloomberg, 6 September 2010)

Chinese government departments including the Ministry of Health have agreed in principle to allow the opening of wholly foreign owned hospitals, the China Business News reported today.

Link:

5. Foreign Banks Apply to Invest in Yuan Bonds (China Daily, 8 September 2010)

Several overseas banks including HSBC Holdings Plc, Standard Chartered Plc and the Bank of East Asia have already submitted their applications for investment quotas on the mainland's interbank market, the Shanghai Securities News reported Tuesday. China's central bank is receiving applications and may release the list of the first batch of overseas banks that are allowed to invest in yuan bonds after the National Day holidays, according to the report.

Link:

6. China Hands out First Internet Map Licenses to 31 Service Providers (Xinhua, 9 September 2010)

On Wednesday, 8 September, China handed out the first group of Internet map service licenses to 31 Chinese and joint-venture operators, after authorities tightened market access amid worries that booming Internet map services might undermine state security. The 31 operators, including a national-level map publisher, several map service providers affiliated with major Chinese portals such as Baidu.com and Sina.com, and nearly a dozen state-
owned local research institutes or mapping bureaus, obtained a class-A license from the State Bureau of Surveying and Mapping.

**Link:**

7. **China Outlines Roadmap in Developing Emerging Industries (Xinhua, 9 September 2010)**

The Chinese government on Wednesday, 8 September, stressed the importance for the country to step up efforts to develop emerging industries of strategic importance. A statement was issued following an executive meeting of China’s State Council which was chaired by Premier Wen Jiabao. It pinpointed the following seven industries as priorities: energy saving and environmental protection, new generation of information technology, biology, high-end equipment manufacturing, new energy, new material and new energy vehicles.

**Link:**

8. **China Vows Better Environment for Foreign Firms; China vows to treat Foreign Business Fairly (Financial Times, 7 September 2010; China Daily, 10 September 2010)**

China’s Vice Premier, Wang Qishan said on Thursday that China will create a better environment for foreign companies in China. Wang made the remarks when meeting with former US Assistant to the President for National Security Affairs, Samuel Berger, who held the position from 1997 to 2001 under the Clinton administration. Wang said he hoped foreign companies will have confidence and patience in China's market potential and the country's long-term development. “The Chinese government will firmly stick to the policy of reform and opening up,” he said.

Xi Jinping, China’s Vice President, told an investment forum on Tuesday his government was taking “vigorous steps” to ensure China “remains the most appealing destination for investment in the world”. His comments come amid increasingly outspoken criticism of China’s business environment from investors in numerous sectors and from a broad range of countries.

**Links:**
http://www.chinadaily.com.cn/business/2010-09/10/content_11284395.htm
http://www.ft.com/cms/s/2/0880387e-ba34-11df-8804-00144feabdc0.html

9. **China’s Energy Goals Prompt Rush (Wall Street Journal, 10 September 2010)**

Some local governments in China are rationing power to factories, homes and hospitals - and even shutting down traffic lights - in a scramble to fall into line with Beijing’s unyielding energy-efficiency targets. The efficiency targets call for a reduction in energy intensity, or the amount of energy used relative to economic output, by 20 per cent over the 2006 - 2010 period. The target is aimed at limiting China’s reliance on expensive natural resources, much of which is imported, and is also central to reducing China’s emissions of greenhouse gases.

**Link:**
http://online.wsj.com/article/SB40001424052748703960004575481421432887654.html
10. Chinese Premier Stresses Scientific Innovation (Xinhua, 14 September 2010)

China’s Premier, Wen Jiabao, on Monday stressed the importance of scientific innovation in the process of shifting from “made in China” to “created in China”. Wen met with entrepreneurs and answered their questions on the sidelines of the World Economic Forum’s “Summer Davos”, in the Asia Annual Meeting of the New Champions 2010 held in North China’s port city of Tianjin. Wen said transforming the mode of economic growth through developing Chinese creation and service was a key issue if the Chinese economy was to maintain balanced, coordinated and sustainable growth.

Link:
http://www.chinadaily.com.cn/china/2010-09/14/content_11299529.htm

11. Radical Treatment for Healthcare (China Daily, 16 September 2010)

Anhui is the first province in China to start a full-scale reform of its grassroots health network commencing in the spring of last year, when the central government unveiled plans to spend 850 billion yuan ($125 billion) to introduce an essential drug system and offer universal access to basic insurance. “The purpose of the initiative is to abolish the existing system, which relies on health providers selling drugs to fill their financing gap,” said Gao Kaiyan, Director of Anhui’s health bureau and the mastermind behind the reform. “It’s the first such experiment in our country.”

Following the collapse of community-funded healthcare for farmers in the early 1980s, market-oriented reforms helped privatize the sector. Government spending fell from 36 per cent of the total health expenditure in 1980 to 15 per cent in 2002, according to figures from the Ministry of Health. While government budgets for health institutions diminished, the liberalization of the pharmaceutical market drove up the prices of medicine considerably. Hospitals were able to sell drugs at a 20 to 30 per cent markup over wholesale costs. As a result, the amount being shouldered by individual patients soared from 21 per cent in 1980 to 59 per cent in 2000. In Anhui, the average inpatient charge in township health centers rose 251 per cent between 2005 and 2009.

“For a long time now, 60 to 70 per cent of grassroots health institutions run on the profits they make from medicine prescriptions,” said Gao. “The more a physician prescribes, the higher their revenue. This results in irrational drug use, over-prescription of antibiotics, the corruption of health workers and high drug prices.” An industry veteran of almost three decades, Gao says his comprehensive reform is necessary to “break the system”. Since January 1 this year, Anhui has launched a series of bold measures involving 4,811 health clinics in 32 pilot counties, affecting more than 20 million people. The reform includes reinstalling a public-purpose grassroots health system by thoroughly reshuffling existing mechanisms to deal with administration, personnel, income distribution and pay. The move has brought township and village clinics back under the umbrella of county health bureaus, which, together with finance and labour authorities, are responsible for approving personnel quotas, fixing budgets and evaluating work.

Link:
http://www.chinadaily.com.cn/china/2010-09/16/content_11309825.htm

V. News of State-Owned Enterprises

1. Sinochem Says not Keen on Potash Buy; Beijing Eyes Potash Counterbid (Financial Times, 6 September 2010; Reuters, 15 September 2010)

China’s state-owned Sinochem Corp appears unwilling to make a bid for Potash Corp, the world’s largest fertilizer maker, even as Beijing voiced concern over BHP Billiton’s $39 billion bid for the Canadian firm on Wednesday. Sinochem would instead consider buying some of Potash Corp’s assets such as its nitrogen or phosphates businesses as an acquisition of the fertilizer giant would not be a good deal, said a senior Sinochem official. China, which typically buys about seven per cent of the output of Potash Corp, fears a BHP takeover
might push up the cost of fertilizers which are crucial to boosting food production for its huge population.

**Links:**

http://www.reuters.com/article/idUSTRE68E1QE20100915
http://www.ft.com/cms/s/0/8591b9a2-b785-11df-8e6-00144feabdc0.html

2. **Vodafone Sale of China Mobile Stake Highlights Tense Ties (China Daily; Wall Street Journal, 9 September 2010)**

Vodafone Group PLC sold its 3.2 per cent stake in China Mobile Ltd. for $6.6 billion on Wednesday. Vodafone bought its stake in China Mobile, which is 74 per cent owned by the Chinese government, in two transactions between 2000 and 2002 for $3.25 billion.

Vodafone's sale of its stake in China Mobile highlights the challenges faced by foreign carriers looking to link up with Chinese telecommunications companies and highlights the reduced need for foreign capital at China Mobile, the world's largest mobile carrier by subscribers. Foreign companies have few possible paths into China's telecom sector which is dominated by the giant state-owned parents of China Mobile, China Unicorn (Hong Kong) Ltd. and China Telecom Corp. Investing in those Hong Kong-listed units, like Vodafone and others have done, gains little influence over the operation of their parent companies and does not license a foreign company to offer telecom services in China.

**Links:**

http://online.wsj.com/article/SB1000142405274870345380453804575479264043544420.html

3. **Sinopec Group to Bid for 42 Gabon Oil Exploration Areas, Reuters Reports (Bloomberg, 10 September 2010)**

China Petrochemical Corp., the nation's second biggest energy company, will join the bidding for 42 offshore exploration blocks off Gabon, Reuters reported. Sinopec Group, as the oil producer is known, expects several international companies to bid for the wells, its President, Su Shulin, was quoted on 9 September. Su spoke in Libreville, the central African nation's capital, after meeting Gabon’s energy minister.

**Link:**


4. **Anshan Cements Steel Moves in US (China Daily, 16 September 2010)**

Anshan Iron & Steel Group on Wednesday inked an agreement with Steel Development Company (SDC) to jointly build a steel rebar plant in the United States, ending doubts on whether the deal would go forward due to opposition from US lawmakers.

Total investment in the Mississippi steel rebar project is $168 million, with Anshan Steel taking a 14 per cent stake in it. The investment, first proposed in May this year, got off to an acrimonious start with the US Congressional Steel Caucus urging the Obama administration to obstruct the proposed joint venture, claiming it would imperil US jobs and threaten national security. Protests over Chinese investment projects in the US market began in 2005 when China National Offshore Oil Corp offered $18.5 billion to acquire Unocal Oil Co. The bid faced strong opposition from US lawmakers who claimed it was a national security threat and was scrapped.

**Link:**

http://www.chinadaily.com.cn/business/2010-09/16/content_11311533.htm
5. Visa blocked in China after Unionpay dispute (Financial Times, 16 September 2010)

Visa has been blocked from starting any new business in China for almost one year after a disagreement with China Unionpay, the country’s state-backed bank card monopoly, according to people familiar with the matter. The problems facing Visa and other global payments companies prompted the United States Trade Representative to file a case with the World Trade Organisation (WTO) against China on Wednesday. In its WTO case, which comes amid rising Sino-US trade tensions, the US government alleges China is breaking commitments it made to trade partners to open its bank card market to international competition by 2006. “The Chinese government is giving China Unionpay a monopoly over most credit and debit card transactions by Chinese consumers,” US Trade Representative Ron Kirk said in a statement. “China’s actions unfairly deprive US credit and debit card companies of access to a huge market” The year-long ban on new business in China for Visa, the world’s largest payments company, appears to be a significant factor in the decision to file a case with the WTO.

Link: http://www.ft.com/cms/s/0/890f6152-c19d-11df-8e03-00144feab49a.html?ftcamp=rss
Chinese version is available at: http://www.ftchinese.com/story/001034674

VI. Other News/Media Comments

1. Price Restriction Rules in the Book Distribution Industry Were Rectified to be Consistent with the AML; NDRC involved (Xinhua, 2 September 2010)

On 30 August, the Publishers Association of China, the Books and Periodicals Distribution Association of China and China Xinhua Bookstore Associations published the revised Rules on Trading in the Book Business (《图书交易规则》), a set of disciplinary rules for book publishers and distributors in China. The revised rules removed several provisions that prohibited book retailers from selling newly published books at discount for one year after the publication date, and prohibited online book retailers from selling newly published books for less than 85 per cent of the original price. The previous rules, entitled the Rules on Fair Trading in the Book Business (《图书公平交易规则》), were issued in January 2010 and had attracted public criticism since then. The Beijing Consumer Association and a group of lawyers complained to the NDRC in January and requested an anti-monopoly investigation into the book distribution sector. The revisions were made as an NDRC requirement and the contents of the rules are now consistent with the AML.


2. Chinese Truck Makers take on Global Groups (Financial Times, 8 September 2010)

International truck makers are facing increasingly tough competition from Chinese commercial vehicle companies, which have already cornered their domestic market and are now aggressively moving to the export market especially south-east Asia and Africa. Chinese exports of commercial vehicles, mostly to emerging markets in Africa and south-east Asia, rose 25 per cent in the first half of 2010 over the first half of last year, to 134,000 units.

Link: http://www.ft.com/cms/s/0/c96527b-bb2d-11df-b3f4-00144feab49a.html
State capitalism is hardly a new phenomenon, but it is very much in the ascendance at the moment. Not only has the financial crisis sapped confidence in the sorts of free-market policies that Washington has promoted since the end of the cold war, but the continued rise of China with its particular blend of “market-Leninism” has given new respectability to the idea of the state taking a large, even dominant, role in the economy. Yet large bureaucracies have a much less impressive record at producing the innovation that Chinese leaders believe is crucial to the long-term future of the economy. That will be the real test for Chinese state capitalism.

Link:
http://www.ft.com/reports/davos-asia-2010
Chinese version is available at:
http://www.ftchinese.com/story/001034643

4. The China Cycle (By Geoff Dyer, Financial Times, 15 September 2010)

Last year China overtook the US to become Brazil’s biggest trading partner. The two large developing countries may be on opposite sides of the planet but their growing economic ties over the past decade have become among the enduring symbols of shifts in the global economy. The duo could also be forging a path for one of the potential biggest realignments in the global economy over the next decade. With little fanfare, China is likely to emerge as the biggest direct investor in Brazil this year, following a string of deals announced in mining, steel, construction equipment and electricity transmission. Such investments are part of a slow-burning but hugely important trend.

Link:
Chinese version is available at:
http://www.ftchinese.com/story/001034624

VII. Selected Publications in English

1. Symposium Articles: Designing Better Institutions to Enforce Competition Law (various authors, 41 Loyola University Chicago Law Journal, pp 411 – 596)

The symposium signaled a renewed focus on institutional concerns and sought to approach this critical issue from a comparative perspective, drawing on the knowledge and expertise of key enforcers, observers, and participants from the principal competition jurisdictions from around the world. For example, based in part on his experience as the former chair of the Australian Competition and Consumer Commission, Professor Allan Fels writes on A Model of Antitrust Regulatory Strategy, which provides a model for the analysis of the strategy, internal and external management of antitrust agencies, and their interrelationships. In Antitrust and Institutions: Design and Change, Professor Eleanor Fox focuses on comparative institutional design, the relationship of design to context, and design and change in competition law and policy institutions, covering leading competition jurisdictions such as the European Union, the United States and China.

Link:

This article describes and compares the procedural and substantive aspects of each of the BRIC (Brazil, Russia, India, and China) merger regimes, including issues such as jurisdiction, standard of review, third party involvement, remedies, and sanctions. The authors noted that while there are differences between the competition law regimes in these jurisdictions, both in terms of the legislation passed and the institutional models employed, efficiency is asserted to be the underlying predicate for each. However, whether the BRIC agencies will join the larger group of competition drones or seek admission to the much smaller fraternity of true competition regimes, remains to be seen.

VIII. Selected Publications in Chinese


This book is a collection of articles on competition law written by Professor Xiaoye Wang since 2000. The 45 articles cover the relationship between competition law and other laws, restrictive agreements, abuse of dominance, merger control, competition law and intellectual property, administrative monopoly, enforcement, competition law and globalization, etc. The book, which reflects the debates and tensions between different opinions on the market economy, economic reform, competition and market order, provides invaluable insights into the development of competition law and policy in China.


This book is a collection of papers submitted for the 6th International Symposium on Competition Law and Policy, led by Professor Xiaoye Wang of the Institute of Law, China Academy of Social Sciences on 3 and 4 July 2009 in Beijing. Contributors include William Kovacic, Daniel Zimmer, Kirtikumar Mehta, Allan Fels, Kwon Ohseung, Markus Lange, Toshiasi Takigawa, Stuart Chemtob, Xiaoye Wang, Wu Yuling, Zheng Pengcheng, Fang Xiaomin, etc. Topics include the goals of competition law and substantial and procedural issues of competition law and enforcement.


This book is a collection of research reports regarding the history, status quo and prospects for China’s competition policy and law contributed by judges, officials and scholars. The book also covers articles on the latest developments in the world’s leading antitrust jurisdictions.
## Major Acronyms

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>AML</td>
<td>Anti-Monopoly Law 2007, PRC</td>
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<tr>
<td>MOFCOM</td>
<td>Ministry of Commerce, PRC</td>
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<tr>
<td>(MOFCOM is one of China’s three competition enforcement agencies which applies the AML and is responsible for enforcing the merger control regime under the AML.)</td>
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<tr>
<td>NDRC</td>
<td>National Development and Reform Commission, PRC</td>
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<td>(NDRC is one of China’s three competition enforcement agencies which applies the AML and is responsible for enforcing price-related infringements of the AML in the areas of restrictive agreements and abuse of dominant market position.)</td>
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<tr>
<td>SAIC</td>
<td>State Administration for Industry and Commerce, PRC</td>
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<tr>
<td>(SAIC is one of China’s three competition enforcement agencies which applies the AML and is responsible for enforcing non price-related infringements of the AML in the areas of restrictive agreements and abuse of dominant market position.)</td>
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<tr>
<td>PRC</td>
<td>People’s Republic of China</td>
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