CHINA'S NEW REGULATION ON FOREIGN M&A: GREEN LIGHT OR RED FLAG?

HUI HUANG*

I INTRODUCTION

With China's entry into the World Trade Organization ('WTO'), the gradual opening of previously closed industry sectors to foreign investment and the continued strong growth of the Chinese economy, merger and acquisition ('M&A') activity has become an increasingly attractive alternative to greenfield investment for foreign investors. In the 1980s, the first wave of foreign direct investment ('FDI') in China mostly took the form of joint ventures, including equity joint venture enterprises ('EJV') and contractual joint venture enterprises ('CJV'). A second wave followed in the 1990s in the form of wholly foreign-owned enterprises ('WFOE'). Now a third wave – cross-border M&A – is gaining strength. Foreign investors are becoming more inclined to invest in China by merging or acquiring existing Chinese companies, particularly the leading players in their fields, because M&A transactions offer foreign investors immediate market access with minimal business risk and the acquired business can be converted to foreign-invested enterprises ('FIE') for favourable treatment.

The increased pace of foreign M&A activity has contributed to restructuring of the foreign M&A regime in China. On 8 August 2006, six Chinese government agencies, led by the Ministry of Commerce ('MOFCOM') of the People's Republic of China ('PRC'), jointly promulgated the Provisions on the Takeover of Domestic Enterprises by Foreign Investors ('2006 Regulation').[1] This Regulation became effective on 8 September 2006, replacing the previous Tentative Provisions on the Takeover of Domestic Enterprises by Foreign Investors ('2003 Tentative Regulation'), which were in force since 12 April 2003. The 2006 Regulation, taken together with several other instruments issued either before or after its promulgation, constitutes a systematic regulatory framework governing foreign M&A activity in China.

This paper considers the central features of this newly introduced 2006 Regulation and then analyses the factors responsible for its adoption. This paper also examines the possible implications it will have for foreign M&A

* Lecturer, University of New South Wales.

1 *Guanyu Waiguo Touzizhe Binggou Jingnei Qiye de Guiding* [Provisions on the Takeover of Domestic Enterprises by Foreign Investors], promulgated 8 August 2006, effective 8 September 2006.

transactions in China, which includes a discussion on the problems with the enforcement of the 2006 Regulation and a proposal for improvement.

II OVERVIEW OF THE NEW REGULATION

A Scope of Coverage

Article 2 of the 2006 Regulation broadly sets out two types of M&A that foreigners can undertake in China, namely 'Equity M&A' and 'Asset M&A'. Equity M&A occurs where a foreign purchaser acquires existing shares, or subscribes to a capital increase in a non-FIE domestic enterprise, and then converts the acquired enterprise into an FIE. It should be noted that the 2006 Regulation defines a non-FIE domestic enterprise as a 'domestic company', because the Equity M&A of FIE by foreigners is basically governed by specific FIE regulations.[2]

The term 'Asset M&A' refers to transactions involving both the establishment by a foreign investor of an FIE, and then acquiring a domestic enterprise by purchasing its assets through the FIE; or by a foreign investor purchasing the assets of a domestic enterprise and then using those assets to establish a new FIE to operate those assets. Importantly, Asset M&A targets are all types of domestic enterprises, including FIEs. In other words, unlike Equity M&A, the Asset M&A of FIEs by foreigners also falls within the ambit of the 2006 Regulation. Moreover, according to article 55(3), where specific regulations governing the merging or splitting of FIEs and domestic investment by FIEs are silent on M&A by existing FIEs, these transactions will be determined under the 2006 Regulation.[3] Hence, article 55 may by default permit acquisition of assets of a pre-existing FIE by foreigners through another pre-existing FIE.

B Restrictions on Round-Tripping Investments

Pursuant to article 9, if the purchase of a domestic company by a foreign investor exceeds at least 25 per cent of registered capital, then it is entitled to favourable FIE treatment. Nevertheless, for the purposes of making this determination, the 2006 Regulation considers the beneficial owner, not the registered investor.[4] Therefore, if the domestic company is acquired by an overseas company, and that overseas acquirer is actually established or controlled by a domestic company, enterprise or natural person that is affiliated with the acquired domestic company, then such an acquisition will not qualify for FIE special treatment.

This article however appears to deter but not prohibit Chinese entities with no foreign investors from taking opportunistic advantage of FIE incentives. Thus, if

---

2 2006 Regulation, art 55(2).

3 The specific regulations regarding FIEs in this respect mainly include: *Guanyu Waishang Touzi Qiye Jingnei Touzi de Zanxing Guiding* [Interim Provisions on Domestic Investment by Foreign-invested Enterprises], promulgated 25 July 2000, effective 1 September 2000; *Guanyu Waishang Touzi Qiye Hebing yu Fenli de Guiding* [Provisions on Merger and Division of Foreign-invested Enterprises], effective 1 November 1999, revised effective 22 November 2001.

4 2006 Regulation, art 9(3).

the acquisition increases the acquired domestic company's registered capital by at least 25 per cent, then the acquisition will qualify for FIE incentives. However, such an investment structure requires the approval by MOFCOM.[5] Further, article 58 stipulates that any subsequent change in the nationality of the individual shareholders of a domestic company will not affect the FIE status of the company. Since FIE incentives are being phased out, this round-tripping investment strategy will gradually lose its appeal for Chinese enterprises.

C Share Swaps

The 2006 Regulation has, for the first time, expressly permitted and regulated share swaps as one of the payment methods for foreign M&A transactions in China. It allows foreign investors to merge or acquire a Chinese domestic company by using disposable foreign-listed shares, cash or a combination of both, subject to certain conditions and government approvals.

The shares used in the takeover of domestic Chinese companies must be publicly traded and from a company registered in a foreign jurisdiction with a well-developed corporate legal system. Moreover, the foreign-listed company and its management must not have been subject to any sanction by the relevant authorities in the preceding three years. The shares contributed by the foreign investors to acquire the domestic company must be lawfully held by shareholders and easily transferable, have no disputes regarding ownership and have a stable trading price in the preceding year. Finally, a Chinese-registered adviser must be engaged to conduct specific due diligence into the financial condition and qualities of the foreign company issuing shares, and issue a professional opinion on whether the shares used in the share swaps have met the aforementioned requirements and also on the truthfulness of the relevant application.[6]

A scrip-based foreign M&A is subject to examination and approval by MOFCOM. Apart from basic documentary conditions as contained in Chapter 3 of the regulation, additional documentation needs to be submitted to MOFCOM for approval, including the advisor's report and other relevant documents related to the share ownership and trading, financial condition and good standing of both the Chinese company and the foreign-listed company. If the application is successful, MOFCOM will first issue a restricted approval certificate which requires the equity transfer to be done within six months. The Chinese target company must then file a tentative foreign exchange registration with the State Administration of Foreign Exchange ('SAFE') and a tentative business licence registration with the State Administration for Industry and Commerce ('SAIC'). After obtaining the tentative business licence, the Chinese company and its shareholders shall apply to MOFCOM for a Chinese enterprise overseas investment approval certificate and replace the restricted FIE approval certificate with a remark by one with no remark.

---

5 2006 Regulation, art 11.

6 2006 Regulation, art 30.

D Regulation of Special Purpose Vehicles

A Special Purpose Vehicle ('SPV') is defined as an overseas entity, directly or indirectly controlled by a domestic Chinese company or a natural person (PRC Founder), and specifically established for the purpose of an overseas listing of the PRC Founder's interests in the domestic enterprise.[7] The PRC Founder can establish an SPV and then use the SPV as an acquiring vehicle to get the domestic Chinese enterprise listed overseas by swapping its shares in the domestic enterprise for shares in the SPV.

The PRC Founder intending to incorporate an SPV must apply to MOFCOM for approval and after obtaining this approval, it must complete registration with the local SAFE authorities for permission to conduct an overseas investment. When an SPV is used as an acquiring vehicle to get a Chinese domestic enterprise listed abroad, the total value of the shares of an SPV listed abroad cannot be lower than the value of the equities of the domestic enterprise concerned as appraised by a Chinese asset appraisal institution. This share swap arrangement requires approval from MOFCOM and the overseas listing of the SPV is subject to the approval of the China Securities Regulatory Commission ('CSRC').[8]

Within 30 working days of the SPV listing on an overseas exchange, the Chinese domestic company must report to MOFCOM on the status of the overseas listing (inclusive of a repatriation plan of raised funds) and apply for an FIE approval certificate. After obtaining the approval certificate and completing the repatriation of all profits and dividends derived from the SPV to China, the domestic company shall apply to SAIC and SAFE for a FIE business licence and a foreign exchange registration certificate. After the SPV is listed overseas and the equity transaction is consummated, its shares can be used as the payment method to acquire further domestic companies.

E National Economic Security Review and Antitrust Review

A key feature introduced by the 2006 Regulation is the national economic security review and the antitrust review by MOFCOM. This review process operates as a supplement to the normal approval processes imposed on all foreign M&A transactions.

According to article 12, the parties to an M&A transaction must report to and seek approval of MOFCOM if the foreign investor intends to gain control of a domestic company in a 'key industry', or the transaction involves transfer of a domestic enterprise's actual control over a 'famous trademark', or 'time-honoured brand', or factors that may have a potential or actual impact on China's national economic security. If the parties fail to do so, MOFCOM and other relevant government agencies may demand that the parties terminate the transaction or implement measures to eliminate the adverse impact on the national economic security of the takeover.

7 2006 Regulation, art 39.
8 2006 Regulation, arts 40, 44.

As to the antitrust review, the 2006 Regulation provides different requirements for onshore and offshore acquisitions, and exemptions from examination. For example, in the case of an onshore acquisition, the foreign investor is required to report to MOFCOM and SAIC to review the competition aspects of the transaction if the turnover of any party to the transaction in the Chinese market exceeds RMB 1.5 billion, the foreign investor has accumulatively acquired more than ten enterprises in the domestic relevant industry, the market share of any party to the transaction has reached 20 per cent in China, or the foreign acquirer reaches 25 per cent market share as a result of the transaction.[9] Article 53 contains similar antitrust review criteria for offshore transactions that may be deemed anti-competitive to the Chinese market. It is noted that the antitrust review may be exempted under certain circumstances pursuant to article 54.

III IMPLICATIONS FOR FOREIGN M&A

A A More Integrated System

The 2006 Regulation represents a substantial amendment and expansion of the 2003 Tentative Regulation, bringing China's foreign M&A legal regime closer to the international standard. In general, the options for undertaking M&A in China are now similar to those in Western countries. Foreign investors may purchase shares of the target, either by acquiring existing shares from a seller or by acquiring newly issued shares from the target, or purchase the assets.

The workability of the regime is also greatly improved. For instance, although the 2003 Tentative Regulation provided that foreign investors may make the payment by means of its own disposable shares in a domestic acquisition, the lack of clear official procedures has meant that in practice such transactions have not been possible. As discussed above, the 2006 Regulation now provides for detailed rules for share swap arrangements. Further, the 2006 Regulation closes another gap in coverage of the 2003 Tentative Regulation by clarifying the utilisation of an SPV as an acquiring vehicle. SPVs were previously referred to in the Circular on Relevant Issues of the Foreign Exchange Administration for Overseas Financing and Round-Trip Investment by Domestic Residents Through Offshore Special Vehicles (also known as 'Circular 75'), an important instrument released by SAFE in 2005, highlighting the issue of overseas financing and round-trip investment by domestic PRC residents. By extending the regulation of SPVs, the 2006 Regulation streamlines China's legal regime for foreign M&A.

Indeed, the 2006 Regulation now provides a clearer and more integrated legal regime for foreign M&A in China. It envisages several ways currently available for foreign investors to enter the Chinese capital market and take over Chinese listed companies. First, foreign investors can purchase so-called B shares which are listed in China but denominated in foreign currency, or so-called H or N shares which are Chinese shares listed in Hong Kong or New York,

9 2006 Regulation, art 51.

respectively.[10] However, since the proportion of the aforementioned shares is usually small, it is very difficult, if not impossible, to take over a listed Chinese company through this gateway. The second possible way is acquiring tradable A shares of domestic-listed companies through so-called Qualified Foreign Institutional Investors ('QFII').[11] However, the investment restrictions presently imposed on QFIIs make this method a hardly viable choice through which to undertake takeovers. In comparison, the third way, whereby foreigners can purchase non-tradable A shares, is more practical. These non-tradable shares are mainly State-owned shares and therefore their transfer requires stringent governmental approval. Historically, the regulation on transferring State-owned shares to foreigners has been gradually loosened. In 2005, a major breakthrough was made to allow foreign strategic investors to acquire substantial shareholdings (and possibly even controlling interests) in Chinese listed companies in this way.[12]

Therefore, the 2006 Regulation makes reference to relevant specific regulations which operate independently of it. Under article 10, the main approval body for foreign M&A activity is MOFCOM and its provincial branches. But depending on the structure of the deal and the nature of the target, additional approvals may be required. For a takeover of domestic listed companies, the parties must also apply to the CSRC, the Chinese securities market watchdog.[13] If the foreign M&A transaction involves transfer of State-owned assets, either in listed companies or non-listed enterprises, then the deal will need additional approvals from the Ministry of Finance, the National Development and Reform Commission ('NDRC'), and the State-owned Assets Supervision and Administration Commission ('SASAC') according to the relevant regulation on the administration of State-owned assets.[14] Further, as a general matter, foreign M&A transactions should be conducted in compliance with the Catalogue Guiding Foreign Investment in Industry ('Catalogue'), which divides foreign investment projects into four categories – encouraged, permitted, restricted and prohibited.[15] In this sense, the 2006 Regulation acts as something of an overarching instrument or a roadmap with respect to foreign M&A transactions.

B A Contextualised Analysis

Although the 2006 Regulation has tidied up relevant regulations in the area greatly, it falls short of providing a single, fully integrated foreign M&A legal

10 For a more detailed discussion of these types of shares, see Hui Huang, 'China's Takeover Law: A Comparative Analysis and Proposals for Reform' (2005) 30 *The Delaware Journal of Corporate Law* 145, 148–154.

11 Ibid.

12 *Waiguo Touzizhe dui Shangshi Gongsi Zhanluetouzi Guanli Banfa* [Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies], promulgated 31 December 2005, effective 30 January 2006.

13 2006 Regulation, art 6(2).

14 2006 Regulation, art 5.

15 2006 Regulation, art 4. The Catalogue is being constantly revised, with the most recent one promulgated on 30 November 2004 and effective 1 January 2005.

regime. As discussed above, a deal may require multiple governmental approvals and many unanswered questions remain about how the overlapping approvals should be coordinated. In practice, the foreign investor usually has to navigate the approval process with the help of the target and by making enquiries of MOFCOM and other approval authorities. This problem may now be exacerbated by the fact that the 2006 Regulation has introduced even more approval requirements in the form of the national economic security review and the antitrust review. The relevant question arising here is how the 2006 Regulation bodes for foreign investors: is it a green light or a red flag?

In order to properly appreciate the impact of the 2006 Regulation on foreign M&A in China, it is necessary to look at the context in which it operates. On 9 November 2006, the National Development and Reform Commission ('NDRC') issued the eleventh five-year plan for utilising foreign investment, stating that priority will be given to quality rather than quantity of foreign investment, that emerging monopolies by FIEs are posing a potential threat to China's economic security and that foreign businesses are harming Chinese enterprises' capacity for independent innovation. This indicates that China's use of foreign investment has moved on to a new stage and the relevant policy will change accordingly.

China has attracted over US$622.4 billion from overseas since 1978 when the economic reform started, and 'surpassed the US in 2003 as the largest recipient of foreign investment'.[16] The country is now so awash with capital that the central bank has had to slow spending growth in an effort to cool down the arguably overheated economy. Consequently, unlike the initial stage of desperately attracting foreign capital, China can now afford to be more selective in relation to foreign investment. It will allow the kind of foreign investment it really desires, that being investments which are able to bring advanced technology and management experience into the country, lower unemployment and improve the environment, while turning down investments that may be less useful or even harmful to the developing Chinese economy. Therefore, China is not trying to deter foreign investment; it is trying to attract high-quality transactions rather than indiscriminately accepting every deal that presents itself.

Indeed, the 2006 Regulation was published amid concerns that foreigners were seizing too many of China's domestic companies. A report conducted by the Development Research Centre under the State Council in 2006 showed that foreign investors controlled the top five businesses in all the industrial sectors that were open to foreign investments, and they also controlled most of the assets in 21 out of the 28 leading industrial sectors in China.[17] This is certainly an alarming situation and yet the previous regime did not provide for the government to screen out undesirable foreign M&A transactions. If China continued to allow foreign M&A activity to be conducted in this way without

16 Eugene Tang and Matthew Benjamin, *China's Foreign-Takeover Rules May Hurt Growth, Invite Backlash* (18 December 2006) Bloomberg <http://www.bloomberg.com/apps/news?pid=20601080&refer=asia&sid=aqATQkgcuqBM> at 18 October 2007.

17 Qi Wu, *China Regulates Foreign Mergers for More Investment* (2006), Embassy of the PRC (USA) <http://www.china-embassy.org/eng/gyzg/t271391.htm> at 18 July 2007.

adequate regulation by the government, the nation's industrial economic security would be in great jeopardy.

This problem was further realised when Chinese companies went overseas to conduct takeovers and found that many countries, including the US, had actually put in place measures to resist foreign M&A in the name of economic patriotism and security. It has been suspected that the adoption of national economic security and anti-monopoly reviews is prompted by the failure of Chinese oil giant China National Offshore Oil Corporation ('CNOOC') to bid for California-based company Unocal in 2005. In other words, China might have learnt to tighten its grip on foreign M&A simply by following internationally-accepted practice.

In sum, the 2006 Regulation is generally a mixed blessing for foreign investors. The upside is that it will make foreign M&A transactions easier to carry out. For example, the legal regime is now more integrated and the rules more facilitative in relation to payment methods and the use of SPVs. The downside is that the new legislation introduces new hurdles including an even more stringent approvals process and a potentially restrictive dual review system in terms of antitrust and national economic security. And, upon closer examination, it appears that the regulation will come as either a green light or a red flag to foreign investments, depending very much on their quality. China still welcomes foreign investments, but now its priority is not about attracting as many of them as possible, but about absorbing new high-tech industry and management skills that it does not possess. Thus, in the face of heightened standards, high-quality foreign investors will have a competitive edge and as such more chance to participate in and benefit from China's rapid economic development.

IV PROBLEMS AND IMPROVEMENT

Although the 2006 Regulation has significantly improved the M&A legal regime, by no means is the regulation without problems. Indeed, despite a more comprehensive framework provided for foreign M&A, the new legislation has left much to be desired, particularly in relation to the national economic review and antitrust review. These issues will play a significant role in determining the future flow of foreign M&A transactions in China.

The national economic review process is vague in many respects. The terms such as 'key industries', 'well-known brand' and 'national economic security' are not defined, and it is unclear whether MOFCOM has the power to block a deal after an advance notice has been filed.[18] MOFCOM has not yet provided a specified list of key industries or protected brands, although it was suggested that the financial, securities, telecommunications, heavy machinery, electricity and media industries are probably considered as 'key industries' triggering greater scrutiny of foreign investment. The absence of clear-cut guidelines regarding the

18 Tai Hsia, Chuan Li and David Patrick Eich, 'Moving Target' (2006) 25(10) *International Financial Law Review* 42, 42.

interpretation may have a serious unintended discouraging effect on foreign investment. For instance, Schaeffler KG, a German maker of precision machinery and auto parts, has failed to invest US$128 million in China to build factories and acquire China's largest ball bearings maker, Luoyang Bearing Science & Technology Co, after the issuance of the 2006 Regulation. The deal was blocked by Chinese regulators on the basis of protecting home-grown technology used in the Shenzhou spacecraft for China's lunar mission.[19]

In order to enhance the workability of the review process, it is submitted that MOFCOM should clarify relevant substantive terms by issuing implementing rules. This would reassure foreign investors that China is not shutting the door to foreign M&A transactions, but is simply ensuring that they are conducted in a mutually beneficial way. Further, drawing upon the experiences of other countries, it is suggested that the establishment of an official body, similar to the Committee on Foreign Investment in the United States or the Foreign Investment Review Board in Australia, would make the review process simpler, more transparent and more effective.

The antitrust review requirement has also drawn considerable criticism. First, the RMB 1.5 billion (roughly US$0.2 billion) triggering threshold for the review is arguably too low, and it is likely that most, if not all, foreign M&A transactions will have to go through the review. Second, although the triggering threshold is relatively clear, there remain uncertainties about how the exemption to the antitrust review would apply. The exemption system is going to be very important, given that the triggering threshold is set quite low. The onus is on the parties to a M&A transaction to prove that they meet the criteria for the waivers. This may create a serious impediment to foreign M&A, since the exemption criteria are not clear, and domestic competitors and other interested parties could potentially use it to delay transactions.[20]

The recent refusal by MOFCOM to approve US-based private equity firm Carlyle Group's planned acquisition of Xugong Group highlights the above concerns. In October 2005, Carlyle Group signed an agreement to pay US$375 million to acquire an 85 per cent holding in Xugong Group. The Xugong Group is China's largest machinery manufacturer and distributor and also the parent company of a listed company, Xugong Tech, which has over 50 per cent of Chinese market share. This transaction resulted in strong objections over concerns that foreign investors had excessive control of the equipment manufacturing sector in China and was vehemently opposed by rival companies.

---

19 See, eg, AFX News Ltd, *Germany's Schaeffler not Giving up Pursuit of China's Luoyang Bearing - Report* (16 May 2007) Forbes.com LLC <http://www.forbes.com/afxnewslimited/feeds/afx/2007/05/16/afx3730202.html> at 18 October 2007. See also, Eugene Tang and Matthew Benjamin, *China's Welcome Cools to Foreign Investment* (18 December 2006) International Herald Tribune <http://www.iht.com/articles/2006/12/17/bloomberg/bxecon.php> at 18 October 2007.

20 Lynn McCaw, Dong Wang and Jordon Brandt, 'China's New Merger and Acquisition Regulations – A New Direction or Just Fine Tuning?' (2007) 18(4) *International Company and Commercial Law Review* 154, 161.

Around one year later, 'Carlye Group agreed to take a less than 50 per cent stake in Xugong in exchange for … government approval of the acquisition'.[21]

In order to provide clearer guidance on the application of the regime, the Anti-monopoly Investigation Office ('AIO') of MOFCOM has issued the Guidelines on Anti-monopoly Filings for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors ('Guidelines') on 8 March 2007. This document clarifies the procedures and information required for a filing, but fails to provide parties to an M&A transaction with any guidance on the substance of the competition analysis that the review authority will apply. Therefore, despite the positive effort by the Chinese authority, the Guidelines seem to provide little assistance to the implementation of the antitrust review. This issue will need to be addressed in future implementing rules and anti-monopoly legislation.[22] In the meantime, as the uncertainties remain, it is highly recommended that foreign investors take advantage of the pre-filing consultation process to apply for a waiver of certain documentation by the AIO.

V CONCLUSION

The 2006 Regulation has significantly revised China's M&A legal regime governing foreign acquisition of domestic companies, highlighting the Chinese Government's greater focus and concern over issues related to foreign-funded M&A transactions. It is designed to facilitate foreign M&A transactions while protecting China's national economic security. On the one hand, it provides some much needed clarity on the rules to be followed in carrying out M&A transactions, which will reduce transaction costs in foreign M&A activity. On the other hand, it introduces more stringent approval requirements in response to the underlying concern that foreign interests are accumulating capacity and market share in China without commensurate oversight by the Central Government.

It seems clear that the new legislation is not intended to discourage foreign investments, but to promote those that are conducive to the Chinese economic development. Hence, those mutually beneficial M&A projects will be favoured, and the 2006 Regulation should come as a green light rather than a red flag for them. However, some uncertainties remain as to the likelihood of obtaining the requisite government approval, particularly in relation to the national economic review and the antitrust review, even though these review requirements are not

---

21 See, eg, Bruce M Owen, Su Sun and Wentong Zheng, 'China's Competition Policy Reforms: The Antimonopoly Law and Beyond' (Stanford Law and Economics Olin Working Paper No 339, Stanford Law School, 2007) 24-26.

22 The National People's Congress ('NPC') of the PRC has recently passed the long-awaited Anti-monopoly Law. See *Zhonghua Renmin Gongheguo Fanlongduan Fa* [Anti-monopoly Law of the People's Republic of China] (promulgated on 30 August 2007, effective from 1 August 2008). This law will apply to the monopolistic conduct by all market participants, including foreigners. While it is of great significance in setting up a national legal framework for regulating market monopoly in China, there remain some areas where clarity and workability need to be improved. The spokesperson for the NPC has indicated that further implementing rules will be made to facilitate effective enforcement. See, 'The Spokesperson for the NPC Talking about Key Issues of Anti-monopoly Law', *Xinhua* (China), 29 September 2007; available at <http://news.xinhuanet.com/legal/2007-09/30/content_6815982.htm> at 12 October 2007.

unique to China, but rather are an international practice. The actual implementation of the new regime will therefore be crucial in ensuring that everybody benefits.