The Dragon in the Room: China's Anti-Monopoly Law and International Merger Review

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In today's world, where companies and their transactions often transcend national borders, multi-jurisdictional antitrust review is a reality of major mergers and acquisitions. A new hurdle appeared in the path of these transactions in August 2008, when China's Anti-Monopoly Law (AML) came into effect. Antitrust review by a government that is historically wary of market forces raises both substantive and procedural concerns for parties to mergers with connections to China. Substantively, the AML empowers Chinese regulators to consider factors beyond the competitive effect of a merger, which could result in efficient mergers being blocked for nationalistic or parochial reasons, to the detriment of consumers and the economy both in China and worldwide. Procedurally, imposing yet another regulatory burden on mergers may deter economically efficient mergers, particularly where the procedure of review remains unclear.

This Note argues that a phased-implementation approach to merger review, starting with a focus on domestic mergers (and other areas of AML enforcement) before moving on to cross-border transactions, gives the best chance of a Chinese merger review regime that protects and benefits Chinese consumers without creating friction in the global economy. Using this approach, a new antitrust regime that initially appeared to be a threat to international mergers may provide valuable lessons for antitrust in developing countries and ultimately improve multi-jurisdictional merger review.

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