External vs. domestic: the evolution of China’s competition regime

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD
Research context

• Project looking at the role of emerging markets in the formation of international economic law
  • Intellectual Property Rights
  • Labor Mobility (GATS 4)
  • Competition Policy
  • Public Procurement

• Competition
  • International cooperation
  • Policy diffusion
Conceptualization

EU → External governance → conditionality, socialization ...

Rule export

EU, US ...

Diffusion

Rule selection

Emerging countries
Economic and institutional context

- 1978: Open & Reform
- 1987: Primary Stage of Socialism
- 1993: Socialist Market Economy
- 1998: Accession to the WTO
- 2001: MOFCOM(SETC)
- 2003: MOFCOM(SETC)
- 2013:
AML legislation


1994  2004
SETC+SAIC
Anti-Unfair Competition Law

2007
NPC SC Enacted

2008
AML

Economic
AML formation

Institutional
EU – China Competition Dialogue

- Yearly meeting
  - 4 «events»
  - (GTZ project 2000-2004)
EU – limited inspiration for China’s AML

- Broad structure of China’s AML resembles EU regime (Art. 101, 102; Merger Regulation), but...
- EU suggestions as of July 2005 draft:

<table>
<thead>
<tr>
<th>EU demands</th>
<th>EU view considered?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives («public interests», «socialist market economy»,...)</td>
<td>No</td>
</tr>
<tr>
<td>One single competition authority</td>
<td>No</td>
</tr>
<tr>
<td>Prohibition of «monopoly agreements» that limit the purchase or development of new technology (➔ IPR)</td>
<td>No</td>
</tr>
<tr>
<td>consider effect of concentration on national economy and public interest</td>
<td>No</td>
</tr>
</tbody>
</table>
China driven process

Domestic consensus: China should refer to the experiences of Europe and America but establish a competition regime that can meet China’s needs and be appropriate to China’s economic conditions and market demand.

- Intellectual support
  - Domestic scholars
    - Being drafters
    - Expert advisory group
  - Pool of foreign experts (2005)

- Seminars
  - Invite foreign experts (2003, 2005)
    - EU, US, DE, RU, KR, JP, OECD, UNCTAD, IBA, ABA, ECCC, MNCs

- Research and Study visits
  - US, EU, AU, JP, MX, NO, RU, FI, etc.
- (Comments to drafts)
China-Japan ELIDP

- For AML legislation and enforcement
- 4 seminars in Beijing and 4 study trips to Japan
# Laws referred & selected in AML legislation

<table>
<thead>
<tr>
<th>Issue</th>
<th>AML</th>
<th>Referred laws/practices</th>
<th>Rule selection</th>
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</thead>
<tbody>
<tr>
<td>Prohibition of monopoly agreements</td>
<td></td>
<td>DE, JP, EU, Chinese Taipei</td>
<td></td>
</tr>
<tr>
<td>Exemptions for certain monopoly agreements</td>
<td>Article 15</td>
<td>EU, Chinese Taipei</td>
<td>Similar to EU categories, also similar to Chinese Taipei’s list</td>
</tr>
<tr>
<td>Abuse of dominant market position</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Relevant market</td>
<td></td>
<td>EU/US</td>
<td></td>
</tr>
<tr>
<td>Abuse of market dominant position</td>
<td>Article 6</td>
<td>EU and US</td>
<td>EU and US</td>
</tr>
<tr>
<td>Legislative modes of addressing abuse</td>
<td>Article 17</td>
<td>US, EU and DE</td>
<td>Listing (EU and DE) plus rule of reason (US)</td>
</tr>
<tr>
<td>Presumption on dominant market position</td>
<td>Article 19</td>
<td>DE, KR</td>
<td>International practice plus CN reality</td>
</tr>
<tr>
<td>Operator concentration</td>
<td></td>
<td>Various, especially DE and EEC</td>
<td>EU and DE</td>
</tr>
<tr>
<td>Ex ante notification</td>
<td>Article 21</td>
<td></td>
<td>International practice</td>
</tr>
<tr>
<td>Standards for prohibition</td>
<td>Article 28</td>
<td>US, DE</td>
<td>US</td>
</tr>
<tr>
<td>Remedies</td>
<td>Article 29</td>
<td>EU and US</td>
<td>Common practice</td>
</tr>
<tr>
<td>Administrative monopoly</td>
<td>Article 6, Chapter 5</td>
<td>Former USSR and Eastern Europe</td>
<td>CN</td>
</tr>
<tr>
<td>Abuse of IP rights</td>
<td></td>
<td>JP, US and EU</td>
<td>JP</td>
</tr>
<tr>
<td>National security review</td>
<td>Article 31</td>
<td>US CFIUS</td>
<td>US</td>
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<tr>
<td>Extraterritoriality</td>
<td>Article 2</td>
<td>Effects doctrine</td>
<td>Effects doctrine</td>
</tr>
<tr>
<td>Enforcement agencies</td>
<td>Article 9, 10</td>
<td>JP, RU, US, etc.</td>
<td>CN</td>
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<tr>
<td>Corrective undertaking</td>
<td>Article 45</td>
<td></td>
<td>JP</td>
</tr>
<tr>
<td>Leniency program</td>
<td>Article 46</td>
<td>EU and US</td>
<td>EU and US</td>
</tr>
<tr>
<td>Civil liabilities</td>
<td>Article 50</td>
<td>EU and US</td>
<td>EU and US</td>
</tr>
<tr>
<td>Essential Facilities Doctrine</td>
<td></td>
<td>US, DE</td>
<td>Deleted: US advice</td>
</tr>
</tbody>
</table>
Conclusion

• Not simply a direct template transplant
• Template diffusion
  • Domestic knowledge and access to template options
  • Epistemic exchanges and institutional policy dialogues
  • Current legal system
On-going research

• More jurisdictions for comparative study
  • Korea
  • Brazil, etc.
• Primary and secondary rules
  • China (finished)
  • More...
• Bilateral and pluri-/multi-lateral mechanism
• Comparison and linkage to other policy fields
  • Public procurement
Thank you!