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Competitive Edge

Local Developments and International Trends Relevant to Hong Kong and China

October 2008

Regional Developments: Coca-Cola's Juice Deal Faces the Antitrust Squeeze

As many readers would be aware, Coca-Cola is proposing to acquire the Beijing-based / Hong Kong listed juice maker China Huiyuan Juice Group (Huiyuan) in an effort to expand its presence beyond carbonated drinks in China. The proposed acquisition is valued at HKD 17.92bn, which would make it the largest takeover of a mainland company by a foreign firm.

The main regulatory obstacle confronting the deal is antitrust review. Under China's Anti-Monopoly Law (AML), relevant M&A deals concerning mainland companies (as well as some purely offshore transactions) are required to be reported to the Ministry of Commerce ("MOFCOM") for antitrust review in various circumstances, including where:

- the involved parties had an aggregate global turnover of more than RMB 10 billion in the previous fiscal year; and
- at least two of the involved parties had annual turnover more than RMB 400m in China in the previous fiscal year

Coca-Cola and Huiyuan achieve these thresholds, and accordingly Coca-Cola provided MOFCOM with formal notification of the deal on 22 September.

The progress of MOFCOM's review will be monitored with interest by the business community and antitrust experts, for two key reasons.

Firstly, the introduction of the AML has led to concerns about the potential for discriminatory antitrust treatment of foreign businesses. These concerns have been fuelled by ambiguous wording in the AML which seems to open the door

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Key Points:

- Coca-Cola is proposing to acquire the Beijing-based juice company China Huiyuan Juice Group.
- The transaction is subject to antitrust review in China, and may also face regulatory scrutiny in the context of regulations aiming to protect China's economic security and key brands.
- Market definition issues and nationalistic concerns are likely to be crucial factors in the review process.
- This will be a key test of China's new Anti-Monopoly Law, and the potential for fair treatment of foreign companies under that law.

for application of the law in a way that may favour domestic businesses (and in particular, *national champions* and key brands). MOFCOM's treatment of the proposed acquisition of Huiyuan may shed some light on whether these concerns are well founded.

Secondly, it is hoped that new information about MOFCOM's antitrust processes will surface during the review period. At this stage, only a broad framework for antitrust review of mergers and acquisitions exists, comprising of relevant provisions in the AML and a very brief set of related implementation rules. The need for transparency and clarity in relation to MOFCOM's review of the Huiyuan acquisition may stimulate the publication or announcement of much-needed additional information on the new AML merger control regime.

KEY ANTITRUST ISSUES

According to Article 28 of the AML, MOFCOM can prohibit a notified transaction if it has, or is deemed likely to have, the effect of eliminating or restricting competition in a relevant market in China.

One of the key issues that MOFCOM will consider when assessing the likely impact of the acquisition is the extent to which it will provide Coca-Cola with a position of significant strength or *dominance* in relevant Chinese markets. The starting point for this assessment is determining the market share that the combined companies would have in China.

This is a complicated matter, as it first requires identification of the *relevant markets* in which the companies compete. These could be argued to be relatively *narrow* markets, such as separate markets for juices and soft drinks, or a much broader market definition could be used - covering all non-alcoholic beverages, for example.

In accordance with international practice, MOFCOM requires that the concept of a *relevant market* be considered from both a product and geographic perspective. In relation to defining a product market, MOFCOM have commonly placed great emphasis on whether relevant goods would be considered *substitutable* with one another from the perspective of consumers, so as to form part of the one market.

In this context, it is worth noting that competition regulators in several mature antitrust jurisdictions, such as Australia, have commonly held that products such as juice and soft drinks should not be considered to form part of the same market. A primary rationale for such decisions has been that there is evidence that a large proportion of consumers do not see these products as substitutable in many circumstances.

This is certainly the market view that Coca-Cola is likely to be espousing in its notification to MOFCOM.

The reason is that Huiyuan currently has a substantial share of mainland juice markets. Newspaper reports have suggested that this share may be over 40% in relation to concentrated juice drinks. Given that Coca-Cola also has an existing presence in mainland juice markets, the proposed acquisition would result in the combined companies having an increased - and by all measures significant - market share.

Relevant analysis might also need to occur in relation to other impacted markets, such as a market relating to soft drinks - where both companies also have an existing presence (albeit much less substantial in aggregate).

Conversely, if the relevant market is defined more broadly, to comprise of all non-alcoholic beverages, the combined market share of Coca-Cola and Huiyuan will obviously be far less of an issue given the vast array of competitors and customer choices in this market.

GROUNDS FOR REVIEW OTHER THAN ANTITRUST

There has been rising nationalist opposition to the deal among the general public in China, which will increase the prospect of regulatory scrutiny of the deal from perspectives other than antitrust review.

Under Article 31 of the AML, review of transactions concerning Chinese markets may also be conducted if they are deemed to have a potential impact on *national security*. While the term *national security* suggests that a scope limited to matters concerning the military and defence industries, it is possible that it could be read more broadly to encapsulate concepts such as economic security and even *cultural* security.

In any case, there are provisions dealing with these broader concepts in other legislation. For example, the *Regulations on the Acquisition of Domestic Enterprises by Foreign Investors* (M&A Regulations) allow the China authorities to review and block transactions where they are deemed to have a potentially adverse impact on *national economic security*, involve *important industries*, or will lead to a change in control of a domestic Chinese company that possesses *well-known trademarks* or a *China Time-Honoured Brand*.

It is not clear whether these provisions could be applied to the proposed transaction between Coca-Cola and Huiyuan, as their wording suggests they may apply only when a mainland Chinese company is being acquired. However, it is possible the provisions could be interpreted more broadly than this, and Huiyuan may be considered a sufficiently famous Chinese brand to merit *protection* from foreign purchasers.

REVIEW PROSPECTS

It has been reported that some mainland juice companies have already contacted the Ministry of Commerce to express their concerns about the proposed transaction. The companies argue that the merged entity would have a dominant position in the market, and would also control a large share of the product distribution network after the deal.

Additionally, many commentators and businesses within China area also calling for MOFCOM to ensure that an opportunity is provided for Huiyuan to be sold to a domestic consortium.

Accordingly, it is likely that the deal will be heavily scrutinized by MOFCOM, and that a decision on whether or not to clear the transaction will take some time (a review period of 180 days is possible under the AML, and further delays are also possible if MOFCOM determines that Coca-Cola has provided incomplete notification documents).

There is a significant risk that antitrust analysis may be sidelined by the growing calls within China for protection of local industries. Accordingly, MOFCOM's treatment of the notification transaction will serve as a litmus test in relation to the mainland' antitrust policies concerning the acquisitions of domestic Chinese firms by overseas companies.

Merger Control in China - How JSM's Antitrust & Competition Team can Assist:

JSM's Antitrust & Competition team is experienced in preparing antitrust filings in China and obtaining regulatory clearances in relation to merger and acquisition activity. Our team has in-depth knowledge on the merger control regime under the pre-existing M&A Regulations and the new Anti-Monopoly Law, as well as the multitude of other laws and regulations in China relating to anti-trust and foreign investment matters. If your business is involved in foreign investment in China, or has China turnover or market share levels that may trigger a need for reporting of M&A transactions, you should contact JSM for advice in relation to how the merger control system in China may impact you.

Think You're not *Dominant*? Think Again!

China's Anti-Monopoly Law (AML) contains a number of significant provisions which apply only to businesses with a *dominant* market position. Many businesses with China operations or sales may assume these provisions don't apply to them if their market shares are not particularly high.

However, this could be a flawed assumption. Due to some unusual drafting, the relevant AML provisions can apply to a much broader range of businesses than just the largest and most successful firms. Indeed, the provisions may apply to a businesses with a relatively small market share, even when their market position appears to be dwarfed by that of rivals.

As the relevant provisions in the AML are far-reaching, and may lead to risks arising from seemingly innocuous business practices, it is important that all businesses with operations or sales in China consider how they may be impacted.

Key Points:

- China's Anti-Monopoly Law prohibits *dominant* firms from engaging in anti-competitive abuses of their position.
- The law contains unusual provisions that could result in firms with only a small market share being deemed to be *dominant*.
- Where the provisions apply to a business, the scope of conduct that may raise antitrust risks is very broad.
- All businesses with operations or sales in China need to consider the 3 key issues outlined at the end of this article.

ABOUT THE PROVISIONS

Article 17 of the AML prohibits an undertaking with a *dominant* position in a market from abusing that position. Relevant abuse conduct is defined to include *selling products at unfair high or buying at unfair low prices*, and engaging in any of the following types of conduct *without valid reasons*:

- Selling products at below cost prices
- Refusing to trade with other companies
- Compelling trading partners to enter into exclusive trading arrangements
- Imposing unreasonable trading conditions or *tie-ins*
- Applying different trading conditions to equivalent trading partners

It can be seen that the range of activity that is caught by the provisions is very wide. Put simply, if Article 17 applies to a business, then significant risks may arise from conduct that the business may have previously assumed was *standard* and risk-free. For example, the provisions could apply where the business offers non-standard pricing deals, rejects customer orders, implements any form of exclusivity arrangements with customers or distributors, offers product *bundles*, or offers different terms to different customers. These are not the kind of activities which businesses may have previously had cause to consider from a legal or *antitrust* perspective.

So when will a business be deemed to be *dominant*?

There are two particular tests that businesses will need to consider. One test looks only at the market share of a relevant business, and the other tests looks at that market share in conjunction with the market share held by key rivals.

THE *SINGLE FIRM* DOMINANCE TEST

According to Article 19 of the AML, a business will be presumed to be dominant where it has a market share of 50% or more. This presumption arises regardless of other factors relating to the level of competition in the market.

This kind of market-share based presumption of dominance is not unusual in the context of international competition laws. However, the threshold test for application of the presumption is set lower than analogous tests in some other jurisdictions.

In the U.S., for example, certain antitrust provisions are only applicable to businesses that have *monopoly power*. In many (although not all) respects, the concepts of *monopoly power* and *dominance* are similar, and businesses possessing *monopoly power* can be restricted from engaging in many of the business practices that are prohibited for *dominant* business under the AML. Although relevant legislation in the U.S. does not specify a precise market share level at which *monopoly power* will be inferred, generally a market share of around 70% or more is considered by courts to establish a prima facie case of monopoly power.

Article 82 of Europe's primary competition law , the *EC Treaty*, prohibits any business with a dominant position in a relevant European market from abusing that position. The European Commission has held that market shares exceeding 70% raise a strong presumption of dominance, while market shares in the 50% to 70% range may in certain circumstances also raise a similar presumption.

Accordingly, it can be seen that what can be termed the *single firm* dominance presumption under the AML may have a much broader application than broadly analogous presumptions in other jurisdictions.

THE *COLLECTIVE* DOMINANCE TEST

Article 19 of the AML also raises a presumption of dominance where a business has a market share of between 10% and 50%, and:

1. when that is combined with the market share of another entity in the same market, the aggregate market share equals 66% or more; or
2. when that is combined with the market share of another two entities in the same market, the aggregate market share equals 75% or more.

The AML is silent on the circumstances in which these *collective* dominance thresholds may be applied. Therefore, as things stand, the presumption could even apply to a relatively small business (with, say, a market share of just 11%) which competes with two other much larger businesses (each with, say, a market shares of 32%).

To many readers, this will appear to be somewhat unjust. However, there are two matters to keep in mind.

Firstly, the provisions raise a presumption only. Based on the wording of other provisions in the AML, it appears this presumption can be rebutted by evidence to the contrary, which may include evidence that:

- the market is highly competitive, notwithstanding the high level of market concentration;
- the relevant business does not have any real power to *control* prices or supply terms; and
- there are low barriers to entry, so new participants could enter and compete if the existing market participants raised prices too high or otherwise imposed trading terms that were too heavily in their favour.

However, it does appear that the onus to demonstrate the existence of such factors will rest with a business which is accused of abusing a position of dominance which is presumed based on the market share thresholds.

Secondly, it is expected that implementation rules relating to the AML will be published in the near future, and that these rules may specify that the collective dominance thresholds only apply in limited circumstances.

In this context, it is noted that similar collective dominance concepts are given a limited application in many other jurisdictions. For example, for collective dominance to exist under Article 82 of the EC Treaty, two or more businesses with a relatively high degree of aggregate market power must from an economic point of view present themselves or act together on a particular market as a collective entity. While it is not required that the businesses adopt identical conduct in every respect, it is required that they adopt a common policy and act to a considerable extent independently of their competitors and their customers.

It is hoped that the forthcoming AML implementation rules will stipulate that similar requirements apply before the *collective dominance* threshold tests can be applied in China-related markets.

WHAT DOES ALL OF THIS MEAN FOR THE BUSINESS SECTOR?

Businesses who have operations or sales in China should consider the following 3 questions:

1. Does my business have a market share in China of 50% or more?

   If your business has a market share of greater than 50%, then a presumption will be raised that relevant 'abuse of dominance' prohibitions in the AML apply. Accordingly, you will need to pay heed to the matters referenced below in point 3 - unless you can point to clear and substantial evidence that your business does not have a dominant position.

2. Does my business have a market share of between 10% and 50%?

   If your business has a market share in China below 10%, then it will generally be safe to assume that the relevant *abuse of dominance* prohibitions in the AML will not apply. However, care needs to be taken when considering the *market* in relation to which this assessment should be made. For competition law purposes, a market will commonly encompass more than one specific type of product, as potential substitutes for that product (from the perspective of consumers, as well as suppliers) may need to be included. Additionally, a market can have a geographic dimension that is much smaller, or conversely much broader, than just *mainland China*. Accordingly, it is appropriate to seek legal advice on the issue of market definition.

   If your business has a market share in China of between 10% and 50%, then you will need to consider whether the business may be deemed to have a dominant market position based on the application of *collective* dominance principles. As noted above, the relevant presumption may apply if, in conjunction with 1 or 2 more businesses in your market (even where they are much larger rivals), you would achieve an aggregate market share of 66% or 75% respectively.

3. How is my business conduct constrained if it is dominant?

   The scope of conduct which may be deemed to constitute unlawful 'abuse' of a dominant position is very broad, and therefore care needs to be exercised by relevant businesses when they are considering matters such as:

- offering non-standard pricing deals, including price-discounting (even in the form of loyalty rebates or similar);
- rejecting customer orders;
- implementing any form of exclusivity arrangements with customers or distributors;
- offering product *bundles*, or supply terms that make the acquisition of a product or service conditional on the subsequent further purchases by the customer; or
- offering different supply terms to different customers.

Some conduct will fall outside of the relevant AML prohibitions where it can be demonstrated that valid business or policy reasons existed for that conduct, and it does not cause undue harm to competition.

However, it is clear that China's antitrust authorities, like their counterparts in many other jurisdictions around the world, recognise that these kinds of conduct can be undertaken by companies who are primarily motivated by the desire to acquire or maintain a position of dominance in a market. Therefore, the onus will be on a *dominant* business engaging in such conduct to show that *valid reasons* were behind such conduct.

As the authorities are yet to provide guidance on what the scope of these *valid reasons* may be, or how companies can go about proving that they were pursuing those aims, this remains an area of some uncertainty and concern. Accordingly, it will be prudent for businesses who may be subject to the relevant provisions to seek legal advice on their position.

How Mayer Brown JSM's Antitrust & Competition Team can Assist:

If your business has sales or operations in China, then Mayer Brown JSM's Antitrust & Competition Team can assist you to understand and avoid the risks that the *abuse of dominance* prohibition poses.

The team is also available to conduct appropriate reviews and to roll-out tailored training programs.

Hong Kong & China - Competition Law Fundamentals

Each issue JSM will consider one element of China and Hong Kong's existing or proposed Competition Laws. This month we examine the issue of *predatory pricing*.

WHAT IS *PREDATORY PRICING*?

Predatory pricing is the term used to describe a situation where a business lowers its pricing, and thereby deliberately incurs losses or foregoes profits in the short run, so as to enable it to eliminate one or more rivals (or prevent entry by one or more potential rivals) who can't compete with that pricing.

Most *mature* competition law jurisdictions prohibit *dominant* businesses from engaging in predatory pricing. This is because it is viewed as a practice which is aimed at stifling competition in the market. Even if consumers may benefit from reduced pricing in the interim period, the concern is that firms engaging in predatory pricing will be able to raise their prices above normal competitive levels at a later stage, once rivals or potential rivals have been eliminated.

IS PREDATORY PRICING ADDRESSED BY CHINA'S COMPETITION LAWS?

A form of predatory pricing is prohibited under the Anti-Monopoly Law (AML). Specifically, Article 17 of the AML prohibits a business that has a dominant market position in China from *selling products below cost*, unless such conduct occurs *for valid reasons*.

Additionally, the 1993 Law of the People's Republic of China for Countering Unfair Competition states that an operator shall not sell its or his goods at a price that is below the cost for the purpose of excluding its or his competitors.

WILL PREDATORY PRICING BE ADDRESSED IN HONG KONG'S PROPOSED COMPETITION LAW?

In Hong Kong, the government has suggested that a proposed new competition law should prohibit businesses that have *substantial market power* from engaging in abuses of that power. While the government's most recent consultation paper on the proposed law does not identify the types of conduct that may constitute an *abuse* of substantial market power, it can be expected (based on overseas examples) that certain predatory pricing conduct will be caught by the law.

HOW DO OTHER JURISDICTIONS TREAT PREDATORY PRICING?

Most jurisdictions use broadly analogous tests to identify unlawful predatory pricing activities. However, there are some key matters which receive varied treatment, and competition regulators in China and Hong Kong will need to develop and announce their policies in relation to these matters. They include:

1. When pricing will be determined to be sufficiently low to be *predatory*.

   In the U.S., predatory pricing issues generally only arise where prices are below an appropriate measure of a businesses' costs in producing the relevant items. Indeed, the U.S. Department of Justice has recently announced that it favours an *average avoidable cost* measure for this purpose, and this measure is also commonly used by the European Commission (EC). A range of other economic models can also be utilised to assess business pricing.

Interestingly, China's National Development and Reform Commission (NDRC), which is responsible for enforcing the AML's key pricing-related provisions, recently formulated draft *implementation rules* which provide some further indication of how Article 17 may me applied. The draft rules states that the concept of *below cost* shall be determined pursuant to the existing *Provisions of Preventing Dumping at Low Price*, which provide that the term "refers to less than the reasonable individual cost for the operated goods... [and] ... When the individual cost can not be identified, it should be determined by governmental price authority pursuant to the industry average cost and the floating rate for such goods."

It remains to be seen whether the NDRC's draft rules will be implemented in their current form, but if they are then it is notable that they avoid any mention of more traditional cost measurements such as *average avoidable cost*, and indicate that in some cases the focus will be on identifying an *average* cost base across the industry. This kind of assessment may prove difficult to administer in practice.

2. Whether it is necessary to show that a business is likely to recoup losses it may incur through the low pricing, in order to establish that it is engaging in *predatory* pricing.

   In the U.S., it is necessary to show that a business has a *dangerous probability* of recouping its investment in below-cost prices before an unlawful predatory pricing claim can be established. This is not generally required by the EC, and there is nothing in the text of the AML to suggest that it will be a requirement under that law. However, if it is clear that recoupment is not a real possibility, then this may aid a claim that the below-cost pricing was motivated by *valid reasons* other than the elimination of competition or potential competition.

3. What defences or justifications may apply?

   As mentioned, the AML prohibition relating to predatory pricing will not apply where the relevant pricing conduct occurs for *valid reasons*. However, to date China's antitrust authorities have not elaborated on what reasons may be *valid* in this context.

   It is notable that in other jurisdictions a range of *valid* or lawful purposes have been identified for below-cost pricing, such as:

- where it is necessary to match competitor pricing;
- for short term promotional offers;
- where it is appropriate to *introduce* a new product to customers, and maximise use of that product to encourage long-run *network effects* (i.e. where the value of the product to customers can be seen to increase as more people use it, such as with mobile phones); and
- to deal with excess capacity or obsolescent goods.

Not all of these purposes have been held to justify below-cost pricing in all situations, however they have been identified as an appropriate rationale for such pricing in certain circumstances. It is hoped that China's antitrust authorities will soon provide guidance on their views regarding whether such reasons for engaging in below-cost pricing may be *valid reasons* in the context of the AML.

How Mayer Brown JSM's Antitrust & Competition Team can Assist:

Mayer Brown JSM's Antitrust & Competition Team is at the forefront of emerging competition law and antitrust issues in China. The team has in-depth knowledge of the pricing-related prohibitions in the Anti-Monopoly Law, and is experienced in advising on *workarounds* in relation to these prohibitions based on international precedent.

International Developments: The Global Financial Crisis - How Antitrust Treats *Failing Firms*

The global financial crisis is forcing many governments to rethink their strategies and policies in relation to market regulation. The collapse of several major investment banks and the ongoing credit crisis has led to increasing government market intervention in a number of countries. Even some of the most strident advocates of 'free market' principles are calling for new regulatory measures to ensure the world economy doesn't slide into *free fall*.

These developments raise some interesting questions about the ongoing role of antitrust laws and policies. In particular, government's are being forced to consider whether it is appropriate for some sectors and institutions to be allowed to engage in forms of cartel behaviour, or to implement 'M&A' deals that may otherwise be deemed to improperly restrict competition, if this may help avoid the collapse of key industries or industry players.

ANTITRUST AND FAILING FIRMS - THE CURRENT *STATE OF PLAY*

Antitrust laws are designed to foster competition - to allow firms to compete on their merits, and to restrict transactions which may create dominant businesses who can run roughshod over their rivals and deal with customers unconstrained by competitive pressures.

However, legislators and regulators around the world have long recognised that the risks to market stability and public welfare that may arise from allowing large institutions such as banks to fail can be greater than the perceived risks of subverting *free market* principles. As a result, many jurisdictions have compromised their antitrust laws by allowing firms to plead defences to antitrust actions which are essentially based on establishing that relevant anti-competitive conduct is a *last resort* to ensure the firm's survival.

For example, a small number of jurisdictions have permitted cartels to operate, to fix prices and coordinate market sharing, where this supports the survival of firms who may otherwise perish due to several economic downturns and related adversity.

More commonly, a *failing firm* defence applies in many merger control regimes. Generally, this allows a merger that may otherwise be blocked due to its adverse effect on competition to be permitted when the firm to be acquired is a *failing firm* that may not otherwise survive independently. In the U.S., the availability of the *failing firm* defence is made clear in the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines. Provision for such a defence is less explicit in the E.U., however European Commission case law has shown it exists to some degree. However, regulators in these jurisdictions have often shown considerable reluctance to apply the defence. Stringent conditions have developed for its application, and therefore it has not often been successfully used.

This may be set to change, however.

A NEW APPROACH TO DEAL WITH A NEW CRISIS?

A significant number of 'M&A' deals involving large financial institutions are currently being implemented. In America, for example, Bank of America Corp. has taken over Merrill Lynch & Co. Inc., JPMorgan Chase & Co. has swallowed Bear Stearns Companies Inc., and Washington Mutual is up for sale. For some of the companies involved in these and other similar international transactions, these deals are viewed as the only means of avoiding financial collapse.

Many of the deals also feature companies on both sides of the deal that hold significant assets and or large market shares. These kinds of deals can attract significant antitrust scrutiny, due to the possibility they may unduly increase the level of concentration in financial services markets, and provide the merged entity with too much market power.

However, there is much speculation that antitrust authorities around the world will be encouraged to overlook any such concerns they may have about this current round of mergers, and instead focus on the bigger picture of the need to ensure the survival (in one form of another) of those firms considered *too big to fail*.

In this way, antitrust may take a back seat to measures aimed at promoting economic stability.

THE *FAILING FIRM* DEFENCE IN CHINA

Interestingly, the merger control provisions in China's Anti-Monopoly Law do not include an express *failing firm* defence.

Under Article 28 of the AML, the Ministry of Commerce (MOFCOM) can block relevant transactions that have, or are likely to have, the effect of eliminating or restricting competition. While the provisions specify that MOFCOM should also have regard to the effect of a transaction on consumers and *the development of the national economy*, there is no express reference to *public interest* grounds for approving a merger or any more specific provision for a *failing firm* defence.

However, Article 31 of the AML also provides for review of transactions on *national security* grounds if they may impact national security, and other regulations provide the authorities with a similar review power in relation to transactions that may impact on *national economic security*. Although the primary intent of these provisions is more likely to have been to facilitate the prohibition of certain politically or economically sensitive transactions, it is possible they may also allow for transactions to be approved, notwithstanding any detrimental impacts on competition, if they serve the interests of national security or national economic security.

This may allow some antitrust leeway for *failing firms* in China, particularly if they are one of China's *national champion* businesses or financial institutions holding the funds of many China citizens or firms.

The AML also includes an exception to the prohibition on cartel arrangements where the cartel occurs *during a period of economic depression* and aims *to moderate serious decreases in sales volumes or distinct production surpluses*. It is not yet clear whether this exception may be applied where an *economic depression* is confined only to a specific industry sector, or whether it is intended to apply only where there is a much broader general economic collapse.

Many of the current mergers involving large multinational financial institutions will need to obtain clearance from MOFCOM in addition to the approval of antitrust regulators in jurisdictions such as the U.S. and E.U. Accordingly, it will be interesting to see the extent to which a convergent approach is taken on *failing firm* issues.

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