

Merger Control in China: Use of Theories of Harms and Implications for Hong Kong

Ping LIN

Centre for Competition Policy & Regulation, LU

Lingnan Competition Policy Forum

15-16 Dec. 2017

- China's framework for assessing competition impacts of horizontal mergers;
- Increasingly explicit applications of theories of unilateral effects
coordinated effects
- Concerns over post-merger abuse
- Willingness and action to adopt state of art economic tools
- Hong Kong "free-riding" on China's merger control

Unilateral Effects are NOT Abuse of dominance

US 2010 Merger Guidelines:

- “A merger between firms selling differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the pre-merger level. Some of the sales lost due to the price rise will merely be diverted to the product of the merger partner and, depending on relative margins, capturing such sales loss through merger may make the price increase profitable even though it would not have been profitable prior to the merger.” (Section 6.1)

Coordinate Effects

- A merger may increase the likelihood of collusion in the relevant market (explicit or tacit collusion --- Geradin, 2008?)
 - Structural changes;
 - Disappearance of “mavericks”
 - Historical evidence of collusion is useful but not sufficient
 - Must show an increase in the probability of collusion

- MOFCOM 2010 Interim of Regulations on Assessment of Competition Impacts of Concentrations of Undertakings
 - Both unilateral effects and coordinated effects are incorporated, albeit in implicit terms;
 - Factors affecting unilateral effects are also specified;
 - Explicit use of UE and CE in official announcements, however, did not start until after 2013.
 - 2017 cases:

MOFCOM's concerns over abuse of dominance

- Creation / enhancement of dominant position
- Post- merger abuse (tie-in sale, ...)
 - Baxter's Acquisition of Gambro (2013)
 - MediaTek acquisition of Mstar (2013)
 - Microsoft acquisition of Nokia (vertical merger, 2014)

- 商务部在对经营者集中的竞争效应的评估中，似乎更加强调对市场地位滥用的担心。比如，在**2013年8月**美国百特国际有限公司（**Baxter International Inc.**）收购瑞典金宝公司（**Gambro AB**）和联发科技有限公司收购开曼晨星的两个横向集中案中，商务部公告都以小标题的形式点出集中企业在集中后滥用其市场支配地位的可能性。
- **2014年4月**在微软收购诺基亚案（纵向兼并）的公告中，商务部明确使用滥用市场支配地位的概念（好像是自**2008年**以来第一次在公告中使用），并作为竞争分析的主要内容和附加限制性条件的依据

Ex Ante control vs. ex post control (Lin and Tan, 2015)

- Unilateral Effects must be controlled at the merger assessment stage, as they are not from abusive conduct.
- Coordinated effects should be controlled ex ante, because cartels are difficult to detect.
- Abusive conduct can be controlled ex post, without scarifying the efficiency gains of a merger;
 - Plus, efficiency gains tend to be long lasting, whereas abuse can be corrected timely.

Hong Kong free riding on merger control in China?

- Hong Kong has no merger control, except in telecoms.
- MOFCOM's Prohibition of P3 Network shipping alliance among Maersk, Switzerland's Mediterranean Shipping Company (MSC) and France's CMA CGM.
- Hong Kong's need to have its own merger control.