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Trade tensions, protectionism a rising trend in global merger control regimes – ABA Singapore

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- US trade and investment tools at forefront of geopolitical tensions
- EU shifts to prioritize local economy in legislation and enforcement
- SAMR review on chip deal, focus on domestic supply-chain stability

Trade tensions and a protectionist mindset are affecting global merger control regimes, according to lawyers speaking at the recent 2025 Asia-Pacific Conference, held by the ABA's International Law Section in Singapore on 28 February.

US

Early indications from Trump 2.0 show that US antitrust enforcement will largely focus on economic efficiency and consumer welfare, said Nathan Bush, partner at DLA Piper.

There will not be a sudden return to the pure Chicago School approach; the 2023 Merger Guidelines will be kept in place and labor issues will continue to be a priority, Bush said.

But the real story is that other trade and investment tools are coming to the foreground, Bush noted.

Bush gave the array of executive orders issued since Trump's second inauguration as an example, noting they are basically a weapons check of international trade tools available at the US' disposal, he said.

The new investment policy that came out late last month signaled an even greater expansion of the review of foreign investments by the Committee on Foreign Investment in the United States (CFIUS), primarily targeting predatory investments and technology acquisition practices of China, Bush noted.

Furthermore, subsidies from China are required to be disclosed under the new Hart-Scott-Rodino (HSR) rules, Bush said. As the new rules cross-referenced the definition of subsidy over that of the trade rules, it results in a really broad definition, he said.

EU

In the EU, competition authorities need to take a more activist stance in protecting the interest of European business – a position that can be traced back to the first Trump administration, said David Cardwell, partner at Baker Botts.

ION PROPRIETARY

Sector: Government
Topics: International Trade & Disputes, Merger Review

Grade: Confirmed

Companies
Qualcomm Inc
Siemens AG
SK Hynix Inc.
Alstom SA
NXP Semiconductors NV
Intel Corporation (NAND Memory And Storage Business)

Agencies
US Department Of Justice (DoJ)
US Federal Trade Commission (FTC)
European Commission
State Administration For Market Regulation (SAMR) - Chinese Competition Authority

M&A
Intel Corporation (NAND Memory And Storage Business) / SK Hynix Inc

Over the last eight to nine years, this has increasingly translated into actual policy changes, Cardwell said.

From 2016 and onwards, EU countries have introduced very strong FDI controls, and the EU implemented the Digital Market Act (DMA) in 2022 and the Foreign Subsidy Regulation (FSR) in 2023.

A key point was the EC's block of Siemens [ETR:SIE]/Alstom [EPA:ALO] deal in 2019, to which national governments in the EU had a very strong negative political reaction, Cardwell said.

In that case, many people argued that Brussels should do more to support European champions, basically defending European industry leaders against their Chinese competitors, which stimulated more serious conversation on both a national and European level around policy, Cardwell said.

As for subsidies, the EU has an internal tool known as state aid and an external tool known as FSR, Cardwell said.

Despite the relatively long history of the state aid regime, there are various periodic temporary regimes being introduced in response to perceived economic crises, Cardwell said.

A good recent example of this was the introduction of the temporary crisis and transition framework of state aid in 2023, which was a direct attempt by Brussels to combat the impact of the US' Inflation Reduction Act at the time, he explained.

China

Industrial policy considerations are explicitly catered to since the promulgation of China's Anti-monopoly Law in 2008, said Christoph Van Opstal, partner at Fangda Partners.

In recent days, industrial policy reveals itself in the form of protecting and boosting China's supply chain resilience in critical technologies and the semiconductor sector, in particular, Van Opstal said.

The watershed moment was the NXP [NASDAQ: NXPI]/Qualcomm [NASDAQ: QCOM] transaction in 2017 and 2018, Van Opstal said. The deal was not prohibited by China but was eventually terminated in July 2018 because China's merger control regulator, the State Administration for Market Regulation (SAMR), did not provide any sort of decision within the time frame stipulated in the merger agreement, he said.

Notably, the last stages of the NXP/Qualcomm SAMR review unfolded during the first Trump administration, when the US president was threatening to impose tariffs on Chinese products and to place certain entities on the US Entity List, Van Opstal said.

One example of SAMR imposing trade and supply remedies in the context of merger control was Intel's NAND business/SK Hynix [KRX:000660] in 2021, Van Opstal said. One of the behavioral remedies that SK Hynix offered was to help facilitate the entry of a third-party competitor, which can be understood as a measure to help boost China's supply chains, he noted.

However, Van Opstal highlighted that only a very small volume of deals under SAMR review are involved with such industrial policy concerns. Generally speaking, China is open for foreign business, he added.

To respond from a China perspective to the EU's FSR, China's Ministry of Commerce recently concluded its investigation into the FSR, saying that there was selective enforcement against Chinese companies, Van Opstal said.

Given that the majority of companies under EU FSR investigations are Chinese, it is clear that Chinese companies are the focal point while the FSR itself was intended to be objective, Van Opstal said.

by Kimberly Jin

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