Editorial

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Articles

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A new era of economic nationalism, already in the making prior to the Covid-19 crisis, has arrived. In the world of international corporate transactions, it implies a tightening of the foreign direct investment screening obligations, a re-thinking of key aspects of merger control law; new authorisation regimes also loom on the horizon. There is a growing regulatory maze where past experience with international merger control should be of use.

XIAOYE WANG & YAJIE GAO

It is around 12 years since the Anti-Monopoly Law of the People's Republic of China ("AML") came into effect in 2008, and China has made huge strides in AML enforcement. Both the experience and competence of the Chinese competition agency have been greatly improved. But with the increasing normalisation and further development of anti-monopoly enforcement, some provisions of the AML have proved unable to meet the current and future practical requirements. With competition policy playing a more important role in China's resource allocation today in comparison to the macro policy environment in place when the AML was enacted, industrial policy has taken a step back which allows more room for competition policy to come to the fore. Against this backdrop, China is on the point of revising the AML so as to strengthen the fundamental role of competition policy within it and prioritise those problems most urgently needing resolution. However, even if the amendment should keep abreast with the times, we argue that the Chinese legislator should be really cautious when considering introducing provisions which are not popular across widespread jurisdictions. Additionally, the process of China's economic reform and the status quo of the competition enforcement agency should also be taken into consideration.

RICHARD BUNWORTH

In an environment of rapid technological advancement, it is necessary for competition authorities to pay greater attention to the impact of mergers on innovation. However, following the adoption of the innovation spaces concept in *Dow/DuPont*, this article argues that the Commission has undermined certainty by broadening its analysis to early stage research and development efforts of undertakings, as opposed to the previous approach which retained harm to identified products as the paramount consideration. The author proposes an alternative four-stage test for the application of the innovation spaces approach, limiting it to situations where it is necessary to fill a potential gap in the Commission's enforcement powers. The test put forward thus seeks to strike a better balance between effective protection of competition in the EU and possible over-enforcement by the Commission. In addition, the article addresses the question of whether the increasingly interventionist approach of the Commission may be prone to error given the difficulty of making accurate long-term forecasts when markets are susceptible to shifting rapidly, and should be replaced by a more restrained outlook allowing for potential self-correction on markets which are subject to persistent change.