

# AGENDA | ANTITRUST IN ASIA: CHINA

## CHINA WORLD HOTEL, BEIJING, CHINA, MAY 21-23, 2014

As of 5. 13.14

WEDNESDAY, MAY 21, 2014

**9:00–10:00**

### CONFERENCE OPENING

Christopher B. HOCKETT, Chair, ABA Section of Antitrust Law, Menlo Park, CA  
Edith RAMIREZ, Chairwoman, Federal Trade Commission, Washington, DC  
Randolph W. TRITELL, Conference Chair, Washington, DC  
University of International Business and Economics (UIBE) Representative  
ZHANG Qiong, Chairman, Expert Advisory Committee of the Anti-Monopoly Commission of the State Council, Beijing  
ZHONG Shan, Vice-Minister, Ministry of Commerce, Beijing

**10:00–10:15**

### COFFEE/TEA BREAK

**10:15–12:15**

### HOT TOPICS IN CHINESE AND INTERNATIONAL COMPETITION POLICY

#### *Moderator:*

HUANG Yong, University of International Business and Economics, Beijing

#### *Panelists:*

Maureen K. OHLHAUSEN, Commissioner, Federal Trade Commission, Washington, DC  
William E. KOVACIC, George Washington University Law School, Washington, DC  
REN Airon, Director General, Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau,  
State Administration for Industry and Commerce, Beijing  
SHANG Ming, Director General, Anti-Monopoly Bureau, Ministry of Commerce, Beijing  
Rod G. SIMS, Chairman, Australian Competition & Consumer Commission, Canberra  
TOH Han Li, Chief Executive Officer, Competition Commission, Singapore  
XU Kunlin, Director General, Price Supervision and Anti-Monopoly Bureau, National Development and  
Reform Commission, Beijing

**12:15–13:30**

### LUNCH

**13:30–16:30**

### FUNDAMENTALS OF CHINESE AND UNITED STATES COMPETITION LAW

**13:30–13:40**

### OVERVIEW

William E. KOVACIC, George Washington University Law School, Washington, DC

**13:40–15:10**

### **(Concurrent sessions)** FUNDAMENTALS OF CHINESE ANTI-MONOPOLY LAW

Leading Chinese scholars and experienced practitioners will explain and analyze the basic premises of Chinese Anti-Monopoly Law, including its origins, institutional structure, key provisions and implementing regulations, and enforcement policies as illustrated by the major cases in the fields of mergers, price-related restraints, and non-price related restraints. Panelists will also cover the application of the AML to matters involving intellectual property rights, including the Guangdong Higher People's Court's recent decisions in *Huawei v. InterDigital*.

#### *Panelists:*

Adrian EMCH, Hogan Lovells International LLP, Beijing  
SHI Jianzhong, China University of Political Science and Law, Beijing  
WANG Xiaoye, Chinese Academy of Social Sciences, Beijing  
ZHANG Xinzhu, Chinese Academy of Social Sciences, Beijing

### FUNDAMENTALS OF UNITED STATES ANTITRUST LAW

Leading antitrust scholars from the United States, including a prominent judge and former Chairman of the Federal Trade Commission, will explain and analyze the main features of the U.S antitrust system, including its history, institutional structure, basic laws and implementing guidelines, key cases, and current enforcement policies.

#### *Panelists:*

Douglas H. GINSBURG, Senior Judge, U.S. Court of Appeals for the D.C. Circuit, Washington, DC  
William E. KOVACIC, George Washington University Law School, Washington, DC  
D. Daniel SOKOL, University of Florida, Gainesville, FL

**15:10–15:30**

### BREAK

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**15:30–16:30**      **ECONOMICS OF COMPETITION LAW**  
Understanding the basic economics that underlie modern competition policy and enforcement is essential to successfully practicing competition law. Leading competition economists from China and the United States will explain these principles, how competition agencies apply them to the analysis and remedies of mergers and potentially anticompetitive business practices, and the role of economists and economics in agencies' decision-making process.

*Panelists:*

GONG Jiong, University of International Business and Economics, Beijing  
WU Hanhong, Renmin Law School, Beijing  
YU Li, Tianjin University of Finance and Economics, Tianjin  
Vanessa Yanhua ZHANG, Global Economics Group, Beijing

**16:30–17:15**      **PRACTICAL TIPS FOR BUILDING A CAREER AS A COMPETITION LAW OR ECONOMICS PROFESSIONAL**  
This program will provide a unique opportunity to gain practical insights on how to build a successful career in antitrust law or economics. Top professionals from around the world from private practice, in-house, government, and academia will offer strategies to help young professionals navigate their career.

*Moderator:*

D. Daniel SOKOL, University of Florida, Gainesville, FL

*Panelists:*

Ninette DODOO, Freshfields Bruckhaus Deringer, Beijing  
LI Zhiqiang (Frank), Policy Counsel - China Competition Law, General Electric Co., Beijing  
Su SUN, Economists Inc., Washington, DC  
Koren W. WONG-ERVIN, Counsel for International Antitrust, Office of International Affairs, Federal Trade Commission, Washington, DC

**17:15–18:00**      **NETWORKING RECEPTION**

### THURSDAY, MAY 22, 2014

**8:30-9:00**      **KEYNOTE ADDRESS**  
Edith RAMIREZ, Chairwoman, Federal Trade Commission, Washington, DC

**9:00–10:30**      **THE RISE OF ANTITRUST IN ASIA**  
Antitrust has become a key consideration for firms doing business in Asia, including in developed and emerging markets and in countries with varied legal and economic systems. Current and recent competition agency leaders will share their perspectives on topics including:

- Key principles and priorities that shape competition law enforcement in this dynamic region;
- How the application of competition rules in Asia can differ from its practice in other regions; and
- Policy trends and developments that are likely to influence competition law and enforcement in the region.

*Moderator:*

H. Stephen HARRIS Jr, Winston & Strawn LLP, Washington, DC

*Panelists:*

Chul Ho JI, Commissioner, Korea Fair Trade Commission, Seoul  
Dhanendra KUMAR, Competition Advisory Services India LLP, New Delhi  
Hiroyuki ODAGIRI, Commissioner, Japan Fair Trade Commission, Tokyo  
Rod G. SIMS, Chairman, Australian Competition & Consumer Commission, Canberra

**10:30–10:45**      **COFFEE/TEA BREAK**

**10:45–12:15**      **THE PRICE IS RIGHT?: RECENT DEVELOPMENTS IN PRICE-RELATED ANTI-MONOPOLY PRACTICES**  
NDRC has become increasingly active in enforcing the Anti-Monopoly Law across a wide spectrum of practices including alleged horizontal price fixing, resale price maintenance, and abusive pricing and related practices of dominant firms. The agency's leadership, prominent practitioners, and the judge who decided a leading RPM case will discuss:

- The use of the AML and the Price Law in investigation of high or collusive pricing;
- Legal standards for the analysis of resale price maintenance by NDRC and the courts;
- Pricing and related issues in abuse of dominance cases, including in the high technology field; and
- Procedural and transparency issues in the conduct of AML and pricing investigations.

**AGENDA | ANTITRUST IN ASIA: CHINA**  
**CHINA WORLD HOTEL, BEIJING, CHINA, MAY 21-23, 2014**

As of 5. 13.14

*Moderator:*

James J. O'CONNELL, Covington & Burling LLP, Washington, DC

*Panelists:*

Roxann E. HENRY, Morrison & Foerster LLP, Washington, DC

XU Kunlin, Director General, Price Supervision and Anti-Monopoly Bureau, National Development and Reform Commission, Beijing

Fay ZHOU, Linklaters LLP, Beijing

**12:15–13:30**      **LUNCH**

**13:30–14:00**      **KEYNOTE ADDRESS**

David G. BROOKS, Chairman, Greater China and Korea Business Unit, The Coca-Cola Company, Shanghai

**14:00–15:30**      **ABUSE OF DOMINANCE AND THE ANTITRUST-INTELLECTUAL PROPERTY INTERFACE**

After a long period of developing guideposts for the application of the Anti-Monopoly Law to intellectual property rights, SAIC appears close to promulgating a regulation that will explain its policies in this key area. SAIC is also exploring the application of the concept of collective dominance. This panel of agency leaders, academics, and private sector experts will shed light on issues including:

- Implications of the intellectual property guidelines for licensing practices in China;
- The role of the “essential facilities” doctrine under the AML;
- The analysis of dominance and collective dominance under the AML; and
- The application of the AML to various forms of non-price related conduct by dominant firms.

*Moderators:*

Brent IRVIN, Vice President and General Counsel, Tencent Holdings Limited, Beijing

Elizabeth Xiao-Ru WANG, Charles River Associates, Boston, MA

*Panelists:*

Alden F. ABBOTT, Deputy Director of the Edwin Meese III Center for Legal and Judicial Studies, The Heritage Foundation, Washington, DC

Maureen K. OHLHAUSEN, Commissioner, Federal Trade Commission, Washington, DC

REN Airon, Director General, Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau, State Administration for Industry and Commerce, Beijing

WANG Xianlin, Shanghai Jiaotong University, Shanghai

**15:30–15:45**      **COFFEE/TEA BREAK**

**15:45–17:15**      **INTERNATIONAL BEST PRACTICE**

As competition laws and policies have spread, members of the competition community including officials, practitioners, businesses, and academics have collaborated to identify widely applicable best practices based on experiences around the world. In this session, panelists from four continents will discuss:

- The process of developing consensus international best practices;
- Challenges of implementing best practices in different legal, economic, and cultural environments;
- How competition agencies have incorporated best practices into their work; and
- The extent to which best practice recommendations have been and could be incorporated into the policies of Asian competition systems.

*Moderator:*

Randolph W. TRITELL, Director, Office of International Affairs, Federal Trade Commission, Washington, DC

*Panelists:*

William E. KOVACIC, George Washington University Law School, Washington, DC

Andreas MUNDT, President, Federal Cartel Office and Chair, International Competition Network, Bonn

Mariana TAVARES de ARAUJO, Levy & Salomão Advogados, Rio de Janeiro

TOH Han Li, Chief Executive Officer, Competition Commission, Singapore

**17:15–18:00**      **COCKTAIL RECEPTION**

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FRIDAY, MAY 23, 2014

**8:30–9:00**

### KEYNOTE ADDRESS

GAO Xiqing, Recent President, China Investment Corporation, Beijing

**9:00–12:15**

### WHAT'S THE DEAL? NAVIGATING MERGER REVIEW FROM PRE-NOTIFICATION THROUGH REMEDY

The rise of merger control in China is a major development and challenge for global M&A planning and execution, with implications for deal timing, process, and clearance outcomes. Three panels, which will include senior MOFCOM officials and leading Chinese and international practitioners and economists, will provide practical insight as they work through a realistic hypothetical merger scenario, including:

- Merger review procedures – determining which deals must be filed, navigating the filing and review process, communicating with MOFCOM and other Ministries that play a role in AML review, dealing with timing issues, and new approaches to streamlining merger reviews;
- Merger analysis – legal, economic, and policy perspectives on the range of substantive issues that can arise in deal reviews, and the types of information that bear on the analysis, including the role of third parties; and
- Merger remedies – the wide variety of remedies that have been implemented in clearance decisions in China, including structural relief, a range of conduct remedies, and hybrid approaches such as “hold separate” provisions. The panel will also discuss how merger remedies in China fit (or don't fit) with those of other jurisdictions in global transactions.

#### *Moderators:*

HUANG Yong, University of International Business and Economics, Beijing

Mark D. WHITENER, Senior Counsel, Competition Law & Policy, General Electric Co., Washington, DC

**9:00–10:00**

### MERGER REVIEW PROCEDURES

#### *Panelists:*

Simon BAXTER, Skadden Arps Meagher & Flom LLP, Brussels

Abbott B. LIPSKY Jr, Latham & Watkins LLP, Washington, DC

John Yong REN, T&D Associates, Beijing

**10:00–11:00**

### MERGER ANALYSIS

#### *Panelists:*

Gregory K. LEONARD, Edgeworth Economics, San Francisco, CA

Scott SHER, Wilson Sonsini, Goodrich & Rosati, Washington, DC

Yizhe ZHANG, Jones Day, Beijing

**11:00–11:15**

### COFFEE/TEA BREAK

**11:15–12:15**

### MERGER REMEDIES

#### *Panelists:*

George CARY, Cleary Gottlieb Steen & Hamilton LLP, Washington, DC

Janet HUI, Jun He, Beijing

SHANG Ming, Director General, Anti-Monopoly Bureau, Ministry of Commerce, Beijing

**12:15–13:15**

### LUNCH

**13:15–14:30**

### COMPETITION POLICY IN CONTEXT

Competition review under some systems may explicitly or implicitly consider economic or social objectives beyond purely competition factors. Transactions subject to competition review may also require review under an increasing panoply of other regimes. Panelists with worldwide experience will:

- Provide insights on how competition policy relates to broader public objectives, especially in developing economies;
- Shed light on the role of non-competition considerations under the Chinese and other competition systems; and
- Explain the increasing importance of parallel reviews under foreign investment and national security regimes.

#### *Moderators:*

John FINGLETON, Fingleton Associates, London

Yan LUO, Covington & Burling LLP, Beijing

#### *Panelists:*

Calvin S. GOLDMAN, Goodmans LLP, Toronto

Michael HAN, Freshfields Bruckhaus Deringer LLP, Beijing

Leslie C. OVERTON, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Washington, DC

WANG Xiaoye, Chinese Academy of Social Sciences, Beijing

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**14:30–15:45**

### PRIVATE ACTIONS ROUNDTABLE

Private enforcement of China's Anti-Monopoly Law has increased markedly in the past several years. In 2012, the Supreme People's Court issued a Judicial Interpretation introducing measures aimed at alleviating the burden of proof for private plaintiffs. There has also been an increase in private litigation in the United States and elsewhere against Chinese entities, for example in the Vitamin C Antitrust Litigation. Panelists with broad and unique experience with Chinese and U.S. antitrust litigation will:

- Illuminate the role of the courts in China's AML enforcement landscape;
- Provide practical insights into the nature and potential pitfalls of private litigation under the AML; and
- Explain the risks to Chinese and other Asian entities from private litigation in the United States and elsewhere, including practical tips and insights from counsel in the Vitamin C litigation.

#### *Moderator:*

Christopher B. HOCKETT, Davis Polk & Wardwell LLP, Menlo Park, CA

#### *Panelists:*

Joseph J. BIAL, Cadwalader Wickersham & Taft LLP, Washington, DC

David S. EVANS, University of Chicago Law School, Chicago, IL

Douglas H. GINSBURG, Senior Judge, U.S. Court of Appeals for the D.C. Circuit, Washington, DC

QI Fang, Fangda Partners, Beijing

**15:45–16:15**

### COFFEE/TEA BREAK

**16:15–17:15**

### NAVIGATING THE ASIAN SHOALS: COMPLIANCE WITH EMERGING COMPETITION REGIMES IN ASIA

The rise of competition enforcement in Asia presents challenges to multinational firms seeking to comply with an expanding myriad of rules, which are often different on their face or in their application from each other and from those in their home jurisdictions. The risk of serious fines and possible criminal exposure heightens the risks of not having a well-developed compliance strategy. This panel of in-house counsel from major multinationals with extensive experience interacting with Asian competition regimes will:

- Highlight differences in the application of substantive merger and other competition rules under Asian competition laws;
- Discuss challenges of the investigation process in Asian competition systems, including transparency, opportunity to be heard, the role of counsel, and attorney-client privilege; and
- Provide practical suggestions for designing and implementing competition compliance programs in Asia.

#### *Moderators:*

Susan NING, King & Wood Mallesons, Beijing

#### *Panelists:*

William BLUMENTHAL, Sidley Austin LLP, Washington, DC

Martin COMMONS, Senior Competition/Antitrust Counsel, BHP Billiton Limited, Singapore

Joy K. FUYUNO, Director of Competition Law for Asia, Microsoft Corporation, Singapore

James H. JEFFS, Competition Counsel, Intel Semiconductor Limited, Hong Kong

**17:15–17:30**

### CONFERENCE CLOSING

Christopher B. HOCKETT, Chair, ABA Section of Antitrust Law, Menlo Park, CA

HUANG Yong, University of International Business and Economics, Beijing

Randolph W. TRITELL, Conference Chair, Washington, DC