

China's Proposed Anti-monopoly Law: The US and European Perspectives

With China's State Council currently studying the draft of the long awaited Anti-Monopoly Law, it seems that legislation to promote fair competition is imminent on the mainland. **Daniel S. Mason** and **Athena Hou Jiangxiao** offer their comments on the draft.

Anti-trust legislation in China, that country's so-called "economic constitution," appears close to becoming a reality.¹ The Tenth National People's Congress (NPC) includes in its legislative plan during its five-year term the promulgation of an Anti-Monopoly Law.² According to an official source, a draft was submitted to the State Council in March 2004 and circulated to relevant state departments and local governments for comments.³

The importance and urgency of anti-trust legislation in China is undisputed. Since the 1980's, the mainland has been transforming from a centrally planned to a market-oriented economy and, as a result, has experienced phenomenal economic growth. Accompanying the economic boom, issues of privatization and government administration of the market have become top concerns of the Chinese government. These issues are perceived as potential risks to the country's successful transition from a planned economy to a healthy market economy.⁴ "Administrative monopoly," which describes improper governmental intervention in the market, remains a problem at both national and local levels as a left-over from the centrally planned system.⁵ Regional and local protectionism, resulting from the separation of the financial powers of central and local governments and an uneven economic reform, prevents the formation of a unified national market.⁶ In addition, private monopoly and industry concentration have emerged and threaten to undermine China's efforts to achieve an orderly market economy.⁷ Some multinational companies are observed to have used unfair pricing, collusion or other unfair measures to safeguard their dominant positions in their respective industries on the mainland.⁸ On the eve of the mainland's WTO accession, China reiterated its promise to formulate an

anti-monopoly law when it joined that organization.

Currently, provisions concerning competition issues are scattered in several laws, regulations, and interim provisions, including the 1993 *Unfair Competition Law*⁹, the 1998 *Price Law*¹⁰, the 2000 *Bid and Tender Law*¹¹, the 2003 *Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors*¹² and most recently the 2003 *Interim Regulations on Prohibition of Monopolistic Pricing Acts*¹³. These competition provisions, however, do not provide a comprehensive and specific competition law framework. A variety of important anti-trust issues, such as mergers and acquisitions, vertical constraints, collusion of various forms, are not addressed. Some provisions are also observed to lack effective enforcement mechanisms to effectively prevent local protectionism or administrative monopoly.¹⁴

The *Draft Anti-Monopoly Law* (the "Draft Law") in circulation is comprehensive and is reasonably expected to represent most principles in the final legislation. The Draft Law prohibits monopoly agreements, abuse of dominant market position, administrative monopolies; mandates approval for certain mergers and acquisitions; provides a private right to actions; and establishes a new anti-monopoly authority directly under the States Council.

The Draft Law is said to have "borrowed from the experience of various countries in anti-monopoly laws (or anti-trust or competition laws)" and is expected to be "compatible with international practice."¹⁵ Indeed, many key anti-trust concepts in the Draft Law have been interpreted and applied extensively in the US and European Union (EU) antitrust laws, the two major anti-trust regimes in the world. The

Evolving China Competition Law		
	Existing Competition Law	Draft Anti-Monopoly Law
Agreements to Restrain Competition	<p>Prohibited activities include:</p> <ul style="list-style-type: none"> (i) price/output fixing; (ii) customer/territory allocation; (iii) collusive tendering/bidding or auctions; and (iv) tie-in and dealing on other restrictive terms (eg technology monopoly). 	<p>Prohibited activities include:</p> <ul style="list-style-type: none"> (i) price/output fixing; (ii) market allocation; (iii) boycott; (iv) collusive tendering/bidding; (v) resale price fixing or other restrictive resale terms; and (vi) restrictions on the purchase or R&D of new technology and equipment.
Abuse of Market Power	<p>Prohibited practices through abuse of market power:</p> <ul style="list-style-type: none"> (i) restricting resale price; (ii) predatory/discriminatory pricing; and (iii) making excessive profits. 	<p>Operators who have market power shall not conduct the following:</p> <ul style="list-style-type: none"> (i) selling products at unreasonably high prices; (ii) predatory/discriminatory pricing; (iii) refusing/forcing to deal; (iv) typing or imposing other unreasonable transaction terms; and (v) exclusive dealings.
Mergers and Acquisitions	<p>M&As by foreign investors are subject to approval if the foreign parties</p> <ul style="list-style-type: none"> (1) in onshore M&As <ul style="list-style-type: none"> (i) realised an annual turnover in the PRC of not less than RMB1.5 billion; (ii) acquired, within one year, more than 10 enterprises in related industries in the PRC; pr (iii) already has a PRC market share of 20%, or will have a market share of 25% after the M&As (2) in offshore M&As <ul style="list-style-type: none"> (i) holds assets in the PRC valued at not less than RMB3 billion; (ii) realised an annual turnover in the PRC of not less than RMB1.5 billion; (iii) will directly or indirectly hold equity interest in not less than 15 enterprises in related industries in the PRC after the M&As; or (iv) already has a PRC market share of 20%, or will have a market share of 25% after the M&As. 	<p>M&As are subject to approval if:</p> <ul style="list-style-type: none"> (i) the aggregate global assets or turnover of the operators exceed RMB3 billion, at least one party has assets or turnover in the PRC exceeding RMB1.5 billion, and the value of the merger exceeds RMB50 million. (ii) the transaction value exceeds RMB200 million; or (iii) a party to the M&A already has a PRC market share of 20%, or will have a market share of 25% after the M&As.
Management of Administrative Power	<p>The government shall not use administrative powers to:</p> <ul style="list-style-type: none"> (i) force dealings; or (ii) restrict market entrance. 	<p>The government shall not use administrative powers to:</p> <ul style="list-style-type: none"> (i) force dealings; (ii) restrict market entrance; (iii) force operators to conduct operations to eliminate or restrain competition; or (iv) promulgate regulations to eliminate or restrain competition.

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Draft Law, however, is also intentionally crafted to suit China's own economic, social and political concerns by taking in different elements from the two anti-trust models. By focusing on the main provisions of the Draft Law in comparison with EU and US anti-trust laws, this analysis assesses the plausible applications of this new legislation.

A. Objectives

The Draft Law states a plethora of objectives that are applied in both the EU and US systems. The Draft Law describes its purposes as "prohibiting monopoly, safeguarding fair competition, protecting the legal rights of business operators and consumers, and the public interest and ensuring the healthy development of the socialist market economy." The purposes of prohibiting monopoly and the protection of the legal rights of consumers appear to be comparable to the goal of maximizing consumer welfare in the US anti-trust laws, which predominantly use an "economic efficiency" analysis. The goal of ensuring the healthy development of the socialist market economy, however, appears to be more akin to the goal of EU laws, which focus on the construction and maintenance of a common market.

The Draft Law's adoption of a variety of objectives is expected to give more flexibility to courts and enforcement agencies in weighing and selecting different social, political and economic factors, based on their policy preference. For example, a focus on the principle of consumer welfare may introduce the US economic efficiency analysis into the decision-making. A priority concern with market integration and competition, on the other hand, may place special attention on issues such as the abuse of a dominant position, as the EU did, as well as the elimination of regional and administrative monopoly.

B. Enforcement Mechanism

The Draft Law provides that an Anti-Monopoly Management Body (AMMB) under the State Council will be the enforcement agency. The AMMB will not only be responsible for reviewing anti-trust matters and issuing relevant decisions and advisory opinions, it will also set forth anti-monopoly policies and rules as well as investigate competition activities. The AMMB may issue orders to stop violations and impose fines. A party "dissatisfied with the penalty decision" may file an application for review with the AMMB, and may further appeal to the People's Court upon unsatisfactory review. Furthermore, the Draft Law grants the AMMB broad investigative powers, including those to request accounting and other relevant documents, to inspect business and non-business premises, to seize and freeze illegal items or evidence, to conduct searches with authorization by the People's Court and to freeze bank accounts.

The AMMB's extensive power implies a centralized enforcement

system similar to the EU Commission. Unlike the Department of Justice and Federal Trade Commission in the United States, the AMMB may issue anti-monopoly policies and rules, conduct investigations and block mergers. In some circumstances, the AMMB's power may even exceed that of the EU Commission. For example, the Draft Law requires a party to file for review only of the AMMB's imposition of "the penalty decision" with the AMMB before filing an appeal with the court. Furthermore, the Draft Law does not provide an appeal mechanism for merger applicants to challenge an AMMB merger review. In contrast, the EU Commission's opinion can be directly appealed against in a Court of First Instance.

C. Prohibition of "Monopoly Agreements"

As with other anti-trust regimes, the Draft Law prohibits monopoly agreements, which are broadly defined as "any contract, agreement or other collective conduct... to exclude or limit competition." Violations of this section may result in an order to stop the questionable practice and a fine of up to RMB 5 million. Six types of agreements are specifically prohibited: Price fixing, collusion in a tender, limitation on production or sale quantity, dividing of the market, limitation of the purchase of new technology or facilities, joint hindrance of newcomers from entering the market or edging out of competitors. In addition, the Draft Law includes a catch-all provision that prohibits "other agreements with the effect of limiting competition."

Several exemptions are available for business operators from this prohibition of cartels. Exemptions are available for "joint actions" for the purpose of technological improvement, operational efficiency and cost reduction. A most powerful exemption is provided in a catch-all provision to allow agreements that "benefit the overall economic development and the public interests."

Like the US and EU anti-trust laws, the Draft Law considers certain types of agreements such as price fixing and market allocation as violations per se and explicitly prohibits them. However, the Draft Law does not specifically provide whether the exemptions are available to these traditional offences as under the EU and US laws. Furthermore, unlike the US and EU antitrust laws, the Draft Law does not draw a distinction between horizontal and vertical agreements. The specific prohibitions listed in the Draft Law are all horizontal agreements. It is an open question whether and how vertical agreements will be held illegal in the catch-all provision.

It is worth noting that the Draft Law provides a number of exemptions in broad terms but no specific guidance for applying them. The extensive availability of exemptions and the lack of explicit instruction on the conditions of invoking the exemptions may undermine China's enforcement of cartel prohibition. For example, in contrast to its broad wording, the catch-all exemption provision does not specify what factors may be considered by the

courts and authorities as possibly able to “benefit overall economic development and the public interests”. Unless more specifically addressed in future case law and legislation, this may give great latitude in interpretation to the decision makers.

Although the Draft Law appears to have adopted the EU's approach by containing specific exemptions provisions rather than using the “rule of reason” analysis as does the United States, the Draft Law is obviously more lenient than the EU laws. For example, the Draft Law contains a similar exemption to that in the EU law to joint action taken by “small and medium size enterprises to improve operational efficiency and to enhance their competitiveness.” However, in contrast to the EU law, the Draft Law does not specify any narrowly tailored conditions such as the indispensability of the agreement, the possibility of eliminating competition, and inapplicability of hard-core violations.

The broadly worded exemptions in the Draft Law leave open the possibility that the Chinese courts and authorities may adopt a case-by-case determination approach as in the United States. Indeed, the extensive discovery rights in the US system have enabled US courts to develop highly fact-specific analysis on specific issues. The rule of reason analysis in US anti-trust cases may provide particular useful references for the Chinese authorities and courts in construing the “economic benefit and the public interest” language in the catch-all exemption provision.

D. “Abuse of Market Manipulating Position”

The Draft Law prohibits a business operator from abusing its dominant market position and specifically lists eight abusive acts, including sales at supra-competitive prices or predatory (below-cost) prices, price discrimination, refusal to deal without valid reasons, forced transactions, forced sales or unreasonable transaction terms, exclusive dealing, and fixing the resale price. A “market manipulating position” is presumed when (1) a particular product of a business operator has more than half of the market share; (2) when a particular product of 2 business operators has more than two thirds of the market share; and (3) when a particular product of 3 business operators has more than three quarters of the market share. Violations of this section may result in an order to stop the questionable practice and a fine up to RMB 10 million. If the violator commits a criminal offense, the violator will be so charged and must bear additional criminal penalties.

The Draft Law's provision concerning prohibition of abusing a monopoly position appears to be similar to EU Treaty as opposed to the US anti-trust law. Similar to EC Treaty Article 82, the Draft Law does not explicitly prohibit attempts or conspiracy to monopolize but only actual abuse of a market monopoly position. It is not clear whether other types of abusive practices not specifically listed in the Draft Law are prohibited as they are prohibited by the EU laws.

The standard adopted by the Draft Law appears to be higher

than that by the United States but similar to the EU. The US Sherman Act, in contrast to the Draft Law, does not sanction a monopoly per se; it requires not only a monopoly power acquired by a defendant, but also certain exclusionary act with an intent to obtain or maintain monopolize by the defendant. The US courts would find an exclusionary act illegal only when such an act has reduced economic efficiencies by raising prices or reducing output. In the EU, courts and enforcement agencies would look at factors other than those related to economic efficiency to account for the unity of the common market. Therefore, the standard “abuse of dominant position” could result in a more rigorous enforcement practices in EU and Draft Law than that in the United States.

It is worth noting that the Draft Law appears to be more lenient toward vertical arrangements. The Draft Law does not specifically prohibit any vertical arrangements except fixing the resale price and tying¹⁶. These two types of conducts are, however, per se violations of the US Sherman Act, to which neither the ownership of a dominant market position nor the rule of reason analysis is required.

The standard for presuming dominant market position in Draft Law appears to be higher than those in the US or in the EU and therefore introduces a lower enforcement threshold. For a specific market of one business operator, a dominant market power is presumed if the business operator has a market share of more than 50%. For a specific market of two business operators, a dominant market power is presumed if the business operator has a market share of more than more than two thirds. This high market share threshold is understandably consistent with China's concern with the fate of state-owned enterprises, which still concentrate in certain industries, in China's transition to the market economy. Although this presumption of dominant market position is not mandatory, the high market share threshold would allow a more lenient application of the market dominance provisions.

The analysis generated by the US and EU authorities can be useful to Chinese authorities in their interpretation of key definitions. For example, the Draft Law defines a “dominant market position” as meaning that “one or several business operators control a specific market.” However, the Draft Law does not define “market” or “specific market.” Both the US and the EU has developed and employed a number of factors for the determination of relevant market.

For another example, the Draft Law prohibits a business operator who is in a dominant market position from refusing to sell its products “without valid reasons.” The term “valid reasons” is not defined. In many cases involving refusals to deal, the US courts cite the presence and absence of a legitimate business purpose as a controlling consideration. Typically, the term “legitimate business purpose” either means that the defendant had no anticompetitive intent,¹⁷ or that the challenged practice is efficient.¹⁸ Similarly in the

EU, a refusal to deal by a dominant firm is only permitted in limited circumstances, i.e. when there are legitimate commercial interests and any steps taken must be fair and proportionate to the threat the company faces from a competitor.¹⁹

In addition, the Draft Law does not specify the standard for determining “cost” in its prohibition of predatory pricing provision. The determination of costs typically involves highly complex analysis in both the US and EU anti-trust cases. Parties usually bring in experts to settle their disputes on how to define “cost” in the US court. In both the US and the EU, a most common measure of “cost” is the “average variable cost.”

E. Anti-competitive Mergers (Concentrations)

The Draft Law addresses a variety of monopoly, or as the Draft Law states, “concentration” practice. It broadly covers mergers, gaining control through the purchase of shares and assets, agreements to an agency or a joint venture and other methods to form a control relationship. If the annual sales revenue of the proposed concentration exceeds the limit set by the AMMB, the companies proposing such concentration must apply for approval. A proposed concentration is not permitted if it “(i) eliminates or limits market competition; (ii) hinders the healthy development of the national economy; and (iii) damages the public interest.” Furthermore, the AMMB can grant special approval to a concentration that eliminates or limits market competition with a specific area if the concentration is advantageous to the national economy and the public interest. In approving mergers, the AMMB can include certain conditions in its approval. Carrying out a merger without prior approval from the AMMB will result in an order to stop the merger, revert to the original business operations within the required period and pay a fine.

At the first brush, the Draft Law’s merger approval conditions are not as specific as the US and EU merger regulations. The first criterion, the elimination or limitation of market competition is almost identical to the US merger test of “significantly lessening competition.” The other two criteria, “hindering the healthy development of the national economy” and “damaging the public interest,” however, are creations of China only. The terms “public interest” and “healthy development of the national economy” relate to unidentified political and social concerns and are open to interpretation.

The use of these undefined broad terms as the conditions for merger approval would create unforeseeable discretion in the authorities’ decision-making. This potential discretion in the AMMB’s merger approval procedure is further expanded by its power to give special approval to concentrations that are anti-competitive but benefit the national economy and the public interest. Potential incongruence exists between the three criteria for special approval: Interest in competition, the national economy

and the public interest. In the United States, efficiency analysis has been frequently used to show a proposed merger could plausibly result in consumer benefits and a competitive market structure by evaluating numerous economic factors in certain factual scenarios. The economic efficiency analysis could be useful to the AMMB when it applies facts and economic analysis to substantiate the broadly worded conditions.

In addition, both the US and EU anti-trust authorities have found it important to define relevant product and geographic markets in merger analysis, in particular in the context of assessing a merger’s anti-competitive effects on the market. The Draft Law, however, does not define “market competition” and would make any examination on market competition a question. The highly sophisticated economic analyses on the definition of the market developed by US and EU authorities will provide useful reference for China.

F. Administrative Monopolies

The Draft Law specifically prohibits five types of administrative monopolies, which refer to anti-competitive conduct by the government and its subsidiary departments that abuse their administrative power. These specific unlawful government practices include (1) forcing purchases from certain business operators or restricting other business operators’ legal business activities; (2) regional monopolies which limit the inflow of products into the local market or the outflow of local products to other markets through enumerated abusive means; (3) department and industry monopolies that limit business operators from entering a particular market and eliminate, limit or interfere with competition; (4) the compelling of businesses to take actions to eliminate or restrict market competition; and (5) enactment of regulations that eliminate, limit or interfere with competition.

The administrative monopoly provisions reflect a concern with improper government conduct that arises from China’s history of a centrally planned system. They are not commonly found in other competition laws, where private monopolies are the main focus of enforcement agencies. In the United States, the doctrine of sovereign immunity precludes bringing suit against the government without its consent. Only actions taken by cities and municipalities that are not acting to enforce state policies are subject to anti-trust law.²⁰ Although the EC Treaty forbids Member State governments from enacting anti-competitive regulations and from providing aid that distorts competition,²¹ these provisions are not addressed in the anti-trust context as in the Draft Law.

G. Private Civil Actions

Like the US anti-trust laws, the Draft Law explicitly provides private right of actions. “Business operators or consumers” may file anti-trust claims with the People’s Court if their legal rights and

interests are damaged by any monopolistic behaviour. Plaintiffs are compensated in the amount of “the actual loss suffered and the forecast profit of the victim.”

The US anti-trust laws, which employ private actions as the principal enforcement mechanism, are the primary source of reference for Chinese courts in issues related to private actions. In the United States, private lawsuits are encouraged by the provision of treble damage awards and cost for successful plaintiffs.²² Moreover, US anti-trust plaintiffs can bring class action lawsuits by acting as *parentes patriae* on behalf of individual consumers of their states, private individuals or companies whose “business” or “property” has been injured. By contrast, in EU, the Commission only fully empowered national courts of Member States to enforce the EC competition rules on May 1 2004. It remains to be seen whether private lawsuits for anti-trust remedies will increase significantly in the future.

However, it seems unlikely that the Draft Law will create a powerful private enforcement system as the US laws. The Draft Law does not specify the effect of government judgements, which may be used as *prima facie* evidence against defendants by private plaintiffs in civil lawsuits in the US. In addition, the Draft Law does not provide a variance of remedies to private actions, such as the injunctive relief and triple damages in the US Clayton Act. Furthermore, discovery in Chinese courts is limited. Chinese courts generally serve as fact finders by questioning the parties, ordering production of documents and conducting inspection of premises. The lack of a variety of remedies and a discovery system will make it difficult for Chinese private parties to file and prove their claims in a civil lawsuit.

H. Conclusion

The Draft Law provides a comprehensive set of rules in dealing with the competition issues in the Chinese market and has borrowed elements from both the US and EU anti-trust models. In articulating a multiplicity of goals, which reveal general social and political concerns other than economic efficiency, the Draft Law adopts a basic structure similar to the EU regime. The EU anti-trust law regime, where the Commission acted as the centralized regulation enforcement agency, may serve as a model for China for structural and institutional purposes. The lack of large award of damages, class action lawsuits and extensive discovery rights in Chinese civil courts are unlikely to promote an anti-trust law system similar to the United States where private lawsuits are the primary means of enforcement. However, the fact-specific anti-trust analysis accumulated over more than a hundred years in the United States will provide valuable reference to the Chinese courts and enforcement authorities in applying those terms undefined in the Draft Law.

Not all key concepts in the Draft Law were borrowed from

the anti-trust law experience of other countries. The Draft Law's prohibition of “administrative monopoly”, a special effort to ensure the complete transition from a centrally planned system to a market economy, does not appear in either the EU or the US anti-trust law regulations. This provision, arguably, poses serious enforcement challenges in an economy that is still transforming from a centrally planned system. This prohibition could be applied to government agencies of various sections and levels. It remains to be seen whether the remedy, an order to stop the violation, can be effectively implemented by the AMMB against another government agency.

In the merger control context, the decision-making is likely to be more sensitive to social and political concerns than to economic concerns, in contrast to the US system. As discussed earlier, the Draft law stated in broad terms the multiple goals that it would serve. The acceptance of these goals, which could reasonably be in conflict in some circumstances, will allow the enforcement authorities to weigh them and assign values to them. The enforcement agency would consequently have more discretion than its US counterparts in choosing its analytical theory in order to reflect disparate political and social considerations, particularly in the merger context.

The ambiguity of language and the discretion built into the Draft Law is not unfamiliar to Chinese legal scholars. In view of the fast changing economic and social life in China, which Chinese law regulates, Chinese lawmakers are observed to have favoured “short-term flexibility and the advantages of ambiguity over long-term consideration.”²³ Economic law in China is to “brushstroke basic policy, allowing any problems that arise to be solved on a case-by-case basis.”²⁴ This indicates the possibility of Chinese legal practitioners and fact-finders borrowing analysis from United States case law on specific legal issues based on their own policy concerns.

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Endnotes

- 1 Anti-Monopoly Legislation on the Way, June 10, 2004, China Economic Net, available at http://en.ce.cn/Business/Macro-economic/t20040610_1041955.html.
- 2 Id.
- 3 Ministry Sets up Anti-Monopoly Office. September 17, 2004, available at http://www.chinadaily.com.cn/en/doc/2004-09/17/content_375331.htm
- 4 See Bing Song, Competition Policy in a Transitional Economy: The Case of China,

- 31 *Stanford Journal of International Law* 387, 393 (1995).
- 5 Id. at 405-406; See also, Breaking Administrative Monopoly Benefits All, December 24 2002, available at http://www.chinadaily.com.cn/chinagate/doc/2002-12/24/content_247506.htm.
- 6 Id. at 405
- 7 Id.
- 8 China Wary of Monopoly of Transnational Companies, China Daily, May 24 2004, available at http://www.chinadaily.com.cn/english/doc/2004-05/24/content_333360.htm.
- 9 *The Law of the People's Republic of China against Unfair Competition* ("Unfair Competition Law"), adopted on September 2 1993 at the Third Session of the Standing Committee of the Eighth National People's Congress, effective December 1 1993.
- 10 *The Price Law of the People's Republic of China* ("Price Law"), adopted on December 29 1997 at the 29th Session of the Standing Committee of the Eighth National People's Congress, effective May 1 1998.
- 11 *The Law of the People's Republic of China on Public Tender and Bid-Invitation* ("Bid and Tender Law"), adopted on August 30, 1999 at the 29th Session of the Standing Committee of the Eighth National People's Congress, effective January 1, 2000.
- 12 *Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors* (the "M&A Provisions"), adopted on January 2, 2003 by the First Ministry Meeting of the Ministry of Foreign Trade and Economic Cooperation, effective on April 12, 2003.
- 13 *The Provisional Regulations for the Prevention of Monopoly Pricing Acts* ("the Pricing Regulations"), adopted on June 18, 2003 by the National Development and Reform Commission, effective November 1, 2003.
- 14 See Wang Xiaoye, The Prospect of Antimonopoly Legislation in China, 1 *Washington University Global Studies Law Review* 201, 223-24 (2002).
- 15 Communication Submitted by China to the United Nations Conference on Trade and Development, June 20, 2002, available at <http://r0.unctad.org/en/subsites/epolicy/docs/IGE0702/China.pdf>.
- 16 Tying is conceivably prohibited by the Draft Law as a type of forced transaction.
- 17 *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919), accord *Reeves, Inc. v. State*, 447 U.S. 429 (1980) (Refusal to deal with competitors is permissible "in the absence of any purpose to create or maintain a monopoly").
- 18 See *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U.S. 359 (1927).
- 19 See, *United Brands Co. v. Commission* (Case 27/76) [1978] ECR 207, para. 182.
- 20 *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978).
- 21 E.g. EC Treaty Article 86(1) prohibits "public undertakings and undertakings to which Member States grant special or exclusive rights. Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89 [on competition]." Article 87 forbids Member States from granting aid "which distorts or threatens to distort competition by favoring certain undertakings."
- 22 15 U.S.C. §15.
- 23 Peter Howard Corne, Creation and Application of Law in the PRC, 50 *American Journal of Comparative Law* 369, 375 (2002).
- 24 Id.