Hard to swallow

China indicates the real targets of its anti-monopoly law: outsiders

Last August, after 14 years of debate, the Chinese government at last imposed what was informally referred to as its “economic constitution”, a broad anti-monopoly law for a country rife with state-imposed monopolies. Since then people have wondered how the law would be applied, and whether it would advance China’s transformation into a market economy, or serve as an impediment to genuine competition. On March 18th an answer emerged with the rejection of the largest outright acquisition by a foreign firm, a $2.4 billion offer by Coca-Cola for China Huiyuan, China’s largest juice company.

When the deal was announced last September, it was at a price three times Huiyuan’s valuation. Since then, as global markets have collapsed, it has only become more appealing. Huiyuan is a private company and juice had previously been free of government control, so theoretically it should have been available for purchase. “It is a very unfortunate outcome in an industry that has no economic or national-security significance,” says Lester Ross of WilmerHale, a law firm, in Beijing.

The most benign interpretation of the rejection being bandied about by lawyers and bankers is that it reflects a political response to critical comments by America’s new administration. The more worrying interpretation is that, even as China publicly urges other countries to commit to opening their markets to Chinese investment and trade, it is imposing yet another barrier to outsiders. Worse still, the barriers are in its domestic consumer sector, one of the few global economic bright spots.

Adding irony to the decision, it comes just as the Chinese government is actively encouraging consolidation and greater market concentration in several areas, including steel, cars and airlines, and just after it imposed a new oligopoly in telecoms. No domestic Chinese transactions have fallen foul of the new monopoly law.

Signs that foreign companies might be the primary targets of the law began to emerge in November, when a merger between two brewers, America’s Anheuser-Busch and Belgium’s InBev, was endorsed by Chinese regulators only on the condition that the combined firm’s existing interest in several domestic breweries be frozen. In particular, Anheuser-Busch’s non-controlling 27% stake in Tsingtao, a leading Chinese brewer, was largely liquidated in January after what is presumed to be pressure from the government.

The Coca-Cola Company holds around half of the domestic Chinese market for carbonated beverages, but the juice business is highly fragmented. Together, the two firms would control slightly more than 20% of the juice business. In a brief statement, China’s ministry of commerce said Coke’s “dominant status” might imperil small competitors and force consumers to face higher prices and less choice.

After the decision was announced, investment banks were left wondering, in the words of one employee, whether “a key plank in their business had just blown up.” Coke has spent years developing its presence in China, and has invested heavily, presumably making it one of the world’s more acceptable buyers. It is also one of the few companies able to finance a big deal in today’s difficult circumstances. If Coke was not acceptable to the Chinese authorities, then who would be? The rejection will inevitably be used as evidence of non-reciprocity, and of the collusion between the country’s state and private sectors, by anyone opposed to China’s recent efforts to buy companies abroad.

Furthermore, another new law comes into effect on May 1st, subjecting any transfer of a state-controlled asset to yet another layer of review, this time by a local commission. Theoretically this is not aimed at any particular kind of acquirer, and would not block well-conceived deals, but that, of course, was said about the monopoly law as well. The new law had not received much attention. It will now.

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