Raising Awareness of Anticompetitive Behavior in the Financial Sector of the People’s Republic of China

The Anti-Monopoly Law, in effect since August 2008, seeks to encourage competition, maintain market order, and facilitates the allocation of resources through open markets in the People’s Republic of China (PRC). Studies on the impact of this law on the PRC’s financial industry have been limited in scope, hence, the research as published was conducted to fill the gap. This study examines the provisions of the law and the legislation process for them, followed by a discussion of the role of the PRC’s anti-monopoly authorities in enforcing the law in the banking, insurance, and securities industries. It looks at monopolistic practices in the financial industry and the mechanisms instituted for supervising and regulating those practices. It then makes conclusions about the current monopoly situation in the PRC’s financial industry and policy recommendations for a more effective and efficient enforcement of the said law.

About the Asian Development Bank

ADB’s vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region’s many successes, it remains home to two-thirds of the world’s poor: 1.7 billion people who live on less than $2 a day, with 828 million struggling on less than $1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration. Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.
Raising Awareness of Anticompetitive Behavior in the Financial Sector of the People’s Republic of China

By Hiroko Uchimura-Shiroishi and Hanhong Wu

Asian Development Bank
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Monopolistic behaviors adversely affect industries and consumer welfare. They discourage competition in an economy, holding back development and slowing down progress. They cause the inefficient allocation of resources, distort the dynamics of market forces, and reduce incentives for industries to innovate. As a corrective measure, governments adopt laws and regulations that would lessen, if not totally eliminate, monopolistic behaviors. Such was the case of the passage of the competition law in the People’s Republic of China (PRC) in 2008.

Serving as the backbone of any modern economy, the financial sector is a key area covered by the competition law of the PRC. This paper examines the application of the law in the PRC’s banking, insurance, and securities markets. It evaluates the prevailing enforcement and regulatory practices relative to the competition law, and reviews issues that cause conflicts between the antimonopoly enforcement authorities and the financial regulators. These issues include scope of enforcement, policy targets, work methods, and work emphasis. While no antimonopoly case has been officially reported since the law was passed, the study points out monopolistic behaviors in the PRC’s financial industry that warrant the attention of the enforcement authorities.

Enforcing the competition law in the PRC’s financial sector is difficult primarily because of a lack of detailed implementation regulations, lack of coordination between the antimonopoly agencies and the financial regulators, and conflict of interest between state ownership of large financial institutions and the need for increased competition in the financial sector. Consequently, the PRC’s antimonopoly enforcement authorities have been asking for the implementing regulations to strengthen the implementation of the law. ADB will continue to support this initiative because it believes that the adoption of a concrete and specific competition policy will ensure the effective implementation of the competition law.

The cooperation between ADB and the PRC on antimonopoly issues has come a long way since 2003. ADB is pleased to have contributed to the PRC’s efforts in adopting the competition law and in developing a comprehensive competition policy. By providing technical assistance to the PRC government, ADB helped revitalize the legislative process for the competition law and supported the development of the legal framework for the law. With the adoption of the competition law, ADB’s assistance then focused on strengthening the capacity of relevant government agencies to implement it effectively. Through this publication, ADB hopes to contribute further to the understanding of antimonopoly practices in the financial sector of the PRC and their implications for the economy.
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## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AIC</td>
<td>administration for industry and commerce</td>
</tr>
<tr>
<td>CBRC</td>
<td>China Banking Regulatory Commission</td>
</tr>
<tr>
<td>CIRC</td>
<td>China Insurance Regulatory Commission</td>
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<tr>
<td>CNY</td>
<td>yuan</td>
</tr>
<tr>
<td>CSRC</td>
<td>China Securities Regulatory Commission</td>
</tr>
<tr>
<td>MOFCOM</td>
<td>Ministry of Commerce</td>
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<tr>
<td>NDRC</td>
<td>National Development and Reform Commission</td>
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<tr>
<td>PBOC</td>
<td>People’s Bank of China</td>
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<tr>
<td>PICC</td>
<td>People’s Insurance Company of China</td>
</tr>
<tr>
<td>PRC</td>
<td>People’s Republic of China</td>
</tr>
<tr>
<td>SAIC</td>
<td>State Administration for Industry and Commerce</td>
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<tr>
<td>SALI</td>
<td>statutory automobile liability insurance</td>
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<tr>
<td>SDB</td>
<td>Shenzhen Development Bank</td>
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<tr>
<td>SMEs</td>
<td>small- and medium-sized enterprises</td>
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Introduction

The Anti-Monopoly Law (competition law), which has been in effect since 1 August 2008, seeks to encourage competition, maintain orderly markets, and facilitate the allocation of resources through open markets in the People's Republic of China (PRC). As provided in Article 2 of the law, the competition law oversees and regulates monopolistic conduct in all economic activities within the PRC. Under Article 12, all forms of monopolistic conduct of natural persons, legal persons, and organizations in the manufacture, sale, or delivery of goods and services within the PRC are subject to the competition law.

State agencies have a dominant role in the PRC's financial industry, which covers the banking, insurance, trust, and securities sectors. As prescribed by law, the banking and trust industry in the PRC is supervised and regulated by the China Banking Regulatory Commission (CBRC); the insurance industry, by the China Insurance Regulatory Commission (CIRC); and the securities industry, by the China Securities Regulatory Commission (CSRC). Since the competition law took effect, however, there have been various challenges to its proper functioning. This study was done to address these challenges. In particular, it was aimed at (i) investigating impediments to the implementation of the competition law in the financial sector, (ii) examining the implications of the limited competition in the financial sector for actual economic activity in the PRC, and (iii) providing recommendations for policy makers and practitioners to improve the situation.

Part II of this study examines the provisions of the PRC's competition law and the legislative process for those provisions, and discusses the role of the antimonopoly authorities. Part III describes the PRC's financial industry briefly and examines the effect of the competition law on the industry, looks at monopolistic practices in the financial industry and the mechanisms for supervising and regulating those practices, and then compares the enforcement and regulation process of the competition law with that of the financial industry. Part IV presents a case study of the acquisition of Shenzhen Development Bank by the Ping An Insurance (Group) of China. Finally, Part V presents the conclusions and policy recommendations of the study.
Review of the 
Competition Law of the 
People’s Republic of China

Competition Law Provisions Concerning the Financial Industry

The competition law, which consists of eight chapters and 57 articles, prohibits monopoly agreements, abuse of a dominant market position, and unlawful concentration of undertakings. It likewise forbids administrative monopolistic conduct.

Monopoly Agreements

According to Article 13, monopoly agreements are agreements, decisions, and other concerted conduct designed to eliminate or restrict competition. Monopoly agreements fix commodity prices, split the market, restrict the amount of commodities manufactured or marketed, and edge out other competitors. Such agreements are either vertical or horizontal agreements, depending on the relationship between or among the parties involved. The competition law specifically prohibits monopoly agreements with trading counterparts (vertical monopoly agreements) and between competing undertakings (horizontal monopoly agreements). Article 15 provides the conditions for exemption, among them, the specific exemption from coverage by the competition law of monopoly agreements that, while restrictive of competition, have been proven to improve technology, help the economy grow, and serve the general public interest. Chapter 2 provides that trade associations may not enter into ventures within their respective trades that would lead to monopoly agreements. In the financial industry, for example, price fixing by commercial banks is considered a horizontal type of monopoly agreement.

Abuse of Dominant Market Position

Article 17 defines the term “dominant market position” as “a market position held by undertakings that can control the price or quantity of products or other transaction conditions in the relevant market or can block or affect the access of other undertakings to the relevant market.” Subject to regulation by the competition law is abuse of their dominant market position by undertakings that seek to eliminate or restrict market competition. Examples of such behavior are selling products at unfairly high prices and buying products at unfairly low prices. Subsequent articles explicitly state the factors and standards by which undertakings are formed to achieve a dominant market position.

Abuse of dominant market position falls under the following categories, among others: exploitative pricing, predatory pricing, discounts, conditional transactions, exclusive dealings, and discriminatory
treatment. In the financial industry, exploitative pricing and conditional transactions by insurance companies with a dominant market position have been frequently noted. Monopolistic conduct that limits or eliminates competition is strictly prohibited worldwide, but in the PRC, domestic undertakings are still premature and competition is either uneven or not yet fully developed. The competition law therefore strives to establish a clear, moderate, and practical system that can make undertakings more self-reliant and self-disciplined, and allow them to improve themselves. It is also aimed at improving technologies, enhancing product quality, and protecting the rights and interests of consumers.

Concentration of Undertakings

The term “concentration,” according to Article 20, refers to the process by which undertakings (i) merge; (ii) gain control over other undertakings by acquiring their shares or assets or through some other means; and (iii) acquire control over other undertakings, or exert decisive influence on them, through contracts or other means.

The concentration of undertakings is a universal tendency in economic development that could affect individual economies in different ways. Generally, the concentration of undertakings promotes economies of scale and helps an undertaking become more competitive. However, in extreme concentrations, undertakings may improve their market position to a point where they achieve a monopoly and thus restrict or completely eliminate competition. When an undertaking in the financial industry reaches the monopoly threshold set in the competition law, it must submit a notice on concentrations to the PRC’s Ministry of Commerce (MOFCOM) and then subject itself to antimonopoly examination. The acquisition of Shenzhen Development Bank by the Ping An Group, for instance, went through antimonopoly examination by MOFCOM, as well as regulatory reviews by CBRC, CIRC, and CSRC. A detailed case study on this acquisition is presented in part IV.

Curtailment of Abuse of the Administrative Power to Restrict Competition

Article 8 prohibits administrative agencies and organizations empowered by law and regulation to manage public affairs from abusing their administrative power in a way that eliminates or restricts competition. Specifically, subject agencies and organizations shall not abuse their administrative powers by limiting organizations or individuals by requiring them to deal, purchase, or use commodities provided by designated undertakings, nor to block regional commodity circulation, nor to restrict or reject either investment in their region or the establishment of local branches by undertakings from other regions, nor to restrict or reject the participation of undertakings from other regions in local bidding activities, nor to compel undertakings to engage in monopolistic activities that are prohibited under this Law, and nor to make regulations that eliminate or restrict competition.

This prohibition emphasizes the two main features of the implementation and execution of the competition law. First, the power to oversee and regulate monopoly belongs to government or its subsidiary organizations, or to organizations authorized by law and regulation to exercise administrative power over public affairs. Second, the abuse of administrative power by these implementing agencies will adversely affect market competition, directly or indirectly.
Implementation of the Competition Law in the People’s Republic of China

Summary of the Implementation of the Competition Law

Together, the various state agencies involved in the implementation of the competition law constitute the antimonopoly enforcement authorities in the PRC. The scope and responsibilities of each agency in implementing the competition law are detailed in the State Council’s Institutional Restructuring Plan (as approved by the First Session of the Eleventh National People’s Congress) and in the Circular of the State Council concerning Organizational Structure (2008, No. 11). The National Development and Reform Commission (NDRC) investigates and penalizes illegal pricing and price monopoly conduct; MOFCOM is in charge of the antimonopoly review of concentration between undertakings; and the State Administration for Industry and Commerce (SAIC) is the antimonopoly enforcement authority when it comes to monopoly agreements, abuse of dominant market position, and abuse of administrative power in order to eliminate or restrict competition (but excluding price monopoly conduct).

On 24 May 2009, the Anti-Monopoly Commission under the State Council issued guidelines defining the so-called “relevant market” as a product or geographic market where competing undertakings supply goods or services during a given period.

NDRC prevents or breaks price-fixing agreements. It has investigated and penalized price fixing in agricultural products, food, industrial raw materials, building materials, and services, including price monopoly agreements reached through meetings, periodic contacts, or trade association arrangements to fix or alter product prices. NDRC has also examined undertakings that abuse their dominant market position by selling products at unfairly high prices or that exercise predatory pricing and discriminatory treatment.

For its part, SAIC has received and acted on complaints and reports on suspected monopolistic conduct. SAIC requires parties engaged in monopolistic conduct of a lesser degree or in undertakings leading to monopolies to rectify their conduct within a specified period. In more serious cases, SAIC calls for an immediate investigation and review. Whenever cases can be delegated to a lower authority, SAIC designates administrations for industry and commerce (AICs) in the provinces to investigate and prosecute those cases.

From January to mid-December of 2011, MOFCOM received a total of 194 notifications of concentration of undertakings, 43% more than the total for the same period in 2010. Of the 194 notifications received, 179 were investigated and reviewed, and of these, 160 were concluded in 2011. One hundred fifty-one of the 160 notifications were approved without any condition, four were eventually approved with additional restrictions, and five were withdrawn. Of these 160 notifications of concentration that MOFCOM decided on in 2011, 103 came from undertakings in manufacturing (64%); 13 from information transmission, computer services, and the software industry (8%); 10 from electricity, gas, and water supply (6%); 10 from transportation, warehousing, and post (6%); 10 from wholesaling and retailing (6%); 7 from mining (4%); 3 from the building industry; 2 from the financial industry; 1 from the real estate industry; and 1 from the scientific research, technological services, and geological exploration industry.

Notifications from manufacturing, transportation, warehousing, and post increased in 2011 over the previous year, while notifications from mining, wholesaling, and retailing decreased. Changes in
notifications from other industries were minimal. As of 2 March 2012, MOFCOM had issued rulings on 12 other notifications of concentration. Except for the notification of the proposed buyout of the PRC’s top juice producer, Huiyuan, by Coca-Cola Company, these other notifications have been approved, with additional restrictions.

Latest Legislation regarding the Competition Law

The Anti–Pricing Monopoly Provisions, issued by NDRC on 29 December 2010, marked the start of the anti–pricing monopoly law system in the PRC. The system (i) defines the forms of horizontal monopoly agreements, (ii) specifies the factors that determine concerted conduct, (iii) regulates the behavior of trade associations, (iv) specifies the procedures for reporting and investigating price monopoly behavior, and (v) offers specific leniency options to companies that volunteer information on acts of monopolistic agreement. Subject to the anti–pricing monopoly provisions are price-monopoly agreements, price-monopoly conduct in undertakings that show abuse of dominant market position, and abuse of administrative power in order to eliminate or restrict competition on the basis of price.

Prohibition against monopoly agreements. On 31 December 2010, to regulate nonprice monopoly agreements, SAIC issued the Provisions of the Administration for Industry and Commerce on Prohibiting Monopoly Agreements. Consistent with the competition law, undertakings in banking, securities, and insurance that are designed to create monopoly agreements are subject to those provisions.

Prohibition against abuse of dominant market position. On 1 July 2009, SAIC issued detailed procedures for investigating and penalizing monopoly agreements, abuse of dominant market position, and abuse of administrative power in order to eliminate or restrict competition. These procedures were contained in two sets of provisions consistent with the competition law, namely: (i) Provisions on the Procedures for Industry and Commerce Authorities to Investigate and Sanction Monopoly Agreements and Abuse of Dominant Market Position, and (ii) Provisions on the Procedures for Industry and Commerce Authorities to Prohibit Excluding or Restricting Competition by Abusing Administrative Powers.


Provisions curbing abuses against eliminating or restricting competition. On 31 December 2010, SAIC published regulations to facilitate the enforcement of prohibitions against administrative monopoly acts. The regulations were contained in a set of measures titled Provisions of the Administration for Industry and Commerce on Curbing Abusive Acts of Administrative Powers to Eliminate or Restrict Competition. The regulations define conduct that constitutes abuse of administrative power in order to eliminate or restrict competition, and describe its various forms and manifestations, thus strengthening antimonopoly enforcement by the AICs.

The regulations list specific monopoly acts of undertakings through administrative enforcement. For instance, Article 3 prohibits administrative agencies and organizations from abusing their administrative power by limiting the commodities dealt, purchased, or used by organizations or
individuals to those provided by designated undertakings, or by limiting other normal business activities through explicit or implicit requirements and refusals, or by delaying the issuance of administrative licenses. Article 36 forbids administrative agencies and organizations to abuse their administrative power by compelling undertakings to engage in monopolistic activities that are prohibited under this law. The regulations also specify the conduct by which administrative limitations, authorizations, and provisions formulated and issued by administrative agencies and organizations are used to achieve monopoly agreements and abusive dominant market positions. These instances are deemed concrete manifestations of monopoly acts by undertakings through administrative enforcement. The regulations also require SAIC and municipal, autonomous regional, and provincial AICs to suggest to higher authorities ways of dealing with such manifestations of abuse of administrative power.

Articles 32–37 of Chapter 5 of the competition law contain prohibitions against the abuse of administrative power to eliminate or restrict competition and state the responsibilities of the administrative departments for industry and commerce in prohibiting the abuse of administrative power. Article 51 of the competition law provides that the antimonopoly enforcement authorities may propose suggestions to higher authorities for dealing with such abuse of administrative power. Also subject to these provisions is the abuse of administrative power in the banking, securities, and insurance sectors.

**Threshold concentration of undertakings.** On 1 August 2008, the Rules of the State Council on Notification Thresholds for Concentrations of Undertakings took effect. The rules were intended to clarify the threshold for issuing a concentration notification of undertakings and to guarantee the effective implementation of the competition law. According to the rules, the threshold for issuing a concentration notification of undertakings is reached (i) when all the undertakings concerned have a combined worldwide turnover of more than CNY10 billion for the preceding financial year, and at least two of the undertakings concerned has a nationwide turnover within the PRC of more than CNY400 million for the preceding financial year; or (ii) when all the undertakings concerned have a combined nationwide turnover within the PRC of more than CNY2 billion for the preceding financial year, and at least two of the undertakings concerned has a nationwide turnover within the PRC of more than CNY400 million for the preceding financial year. A concentration of undertakings that reaches any of the above thresholds must file prior notification with the antimonopoly enforcement authorities.

On 5 January 2009, MOFCOM’s Anti-Monopoly Bureau issued guidelines for concentration notification undertakings as reference for the handling of concentration notices in the financial industry. The guidelines, under the title Method to Calculate Turnover of Financial Industry in Notification of Concentrations between Undertakings, were formulated together with the People’s Bank of China, CBRC, CIRC, and CSRC. Approved by the State Council’s Anti-Monopoly Commission and proclaimed on 15 July 2009, the guidelines apply to the calculation of the turnover of undertakings in the financial industry, including banking institutions, securities companies, futures companies, fund management companies, and insurance companies. In the banking sector, the guidelines apply to financial asset management companies, trust companies, finance industries, financial leasing companies, automotive finance companies, currency brokerage firms, and other established financial institutions, subject to the approval of banking regulatory agencies.

On 21 November 2009, in accordance with the competition law and the Rules of the State Council on Notification Thresholds for Concentrations of Undertakings, MOFCOM issued the Measures for Notification of Concentrations between Undertakings. In effect since 1 January 2010, the measures regulate the notification of concentration by undertakings and the acceptance of the concentration
notification by the antimonopoly enforcement authorities. On 24 November 2009, MOFCOM also issued the Measures for Review of Concentrations between Undertakings to clarify the review procedures; these measures took effect on 1 January 2010. On 30 December 2011, MOFCOM specified the filing procedures for the investigation and prosecution of relevant undertakings by issuing its Interim Measures for the Investigation and Decision in Connection with the Failure of the Concerned Undertaking(s) Reaching Notification Threshold. Earlier, on 5 September 2009, the Interim Provisions on Assessment of the Competition Impact of Concentration of Undertaking were passed.

**Antimonopoly Enforcement Authorities**

The antimonopoly enforcement authorities in the PRC, as mentioned earlier, are SAIC, NDRC, and MOFCOM. Some scholars argued for the establishment of a uniform antimonopoly authority while the competition law was being formulated, but their recommendation was not adopted. In fact, even before the competition law was passed, SAIC, NDRC, and MOFCOM had already implemented their versions of the law in their respective fields. SAIC, in particular, had passed a law against unfair competition, while NDRC had been regulating market prices.

The State Council approved three enforcement provisions in 2008. The Provisions on the Main Functions, Establishment and Staffing of the Internal Agencies of MOFCOM, NDRC, and SAIC established an antimonopoly unit within each agency.

NDRC was put in charge of formulating and adjusting the prices of a few vital products and the standards for a few important services to be regulated directly by the state. It was also made responsible for investigating and penalizing illegal conduct regarding prices, as well as price-monopoly conduct. SAIC was given the responsibility of enforcing antimonopoly regulations pertaining to monopoly agreements, abuse of dominant market position, and abuse of administrative power in order to eliminate or restrict competition (excluding price-monopoly conduct). MOFCOM was made responsible for conducting an antimonopoly review of the concentration of undertakings and for providing guidance to domestic enterprises facing antimonopoly litigation overseas, as well as for maintaining international exchange and cooperation in multilateral and bilateral competition policies.

**State Administration for Industry and Commerce**

SAIC established the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau according to the approved Provisions on the Main Functions, Establishment and Staffing of the Internal Agencies of the State Administration for Industry and Commerce. The bureau is responsible for (i) formulating specific antimonopoly and anti–unfair competition measures; (ii) enforcing antimonopoly regulations; (iii) initiating investigations of unfair competition practices, commercial bribery, smuggling, and other cases violating economic laws; and (iv) supervising the handling of serious and material cases. The following offices were created under the bureau: (i) general office, (ii) antimonopoly enforcement office, (iii) antimonopoly legal advisory office, (iv) anti–unfair competition office, and (v) office supervising and coordinating the handling of serious cases.

Since the competition law was first implemented, SAIC has been active in enforcing its antimonopoly enforcement functions, particularly in formulating provisions to support the law. In 2010, it formulated three sets of provisions: (i) Provisions of the Administration for Industry and Commerce
on Prohibiting the Abuse of Dominant Market Positions, (ii) Provisions of the Administration for Industry and Commerce on Prohibiting Monopolistic Agreements, and (iii) Provisions of the Administration for Industry and Commerce on Curbing Abusive Acts of Administrative Powers to Eliminate or Restrict Competition. Besides providing effective guidelines for antimonopoly enforcement by the administrative departments for industry and commerce, these provisions have helped increase the relevance of antimonopoly enforcement. SAIC has also launched a series of antimonopoly enforcement activities, one of which involved Lianyungang in Jiangsu Province, with good social consequences. In addition, SAIC has sent students abroad and developed other extensive international exchange programs, including a seminar on competition laws in the PRC and Europe, which it organized together with MOFCOM, NDRC, and the General Competition Office of the European Commission.

**National Development and Reform Commission**

NDRC established the Department of Price Supervision according to the approved Provisions on the Main Functions, Establishment and Staffing of the Internal Agencies of the National Development and Reform Commission. The department (i) drafts administrative laws and regulations for price supervision and inspection; (ii) provides guidance and organizes price supervision and inspection; (iii) handles activities and cases related to commodity prices; (iv) services price and fee collection by central government agencies for violations of price-related laws; and (v) handles price monopoly activities, reconsideration cases, and appeals concerning punishment for price violations.

There are nine divisions under the Department of Price Supervision, namely: (i) general administration, (ii) legal affairs, (iii) supervision and direction, (iv) price inspection, (v) fee inspection, (vi) market price supervision and regulation, (vii) anti–pricing monopoly investigation (two divisions), and (viii) competition policies and international cooperation.

After the competition law took effect, NDRC promptly formulated supporting regulations. It carried out an extensive international exchange program and investigated a series of typical cases that became landmark achievements in antimonopoly enforcement. To ensure the effective execution of its mandate, the agency has continually recruited and trained capable enforcement staff. Most of the officials who were put in charge of curbing price monopoly acts had majored in law or economics, making them an effective mainstay of the anti–pricing monopoly enforcement staff. On 29 December 2010, NDRC issued the Anti–Pricing Monopoly Provisions and the Provisions for Execution Procedures of Anti–Pricing Monopoly to emphasize the importance of prosecuting anti–pricing monopoly cases. NDRC achieved good social results through its successful antimonopoly activities. The agency then established and strengthened business contacts with other countries, regions, and international organizations, developed an extensive international exchange program, and launched professional training for its staff, thereby helping to build an external environment conducive to antimonopoly enforcement.

**Ministry of Commerce**

MOFCOM established its Anti-Monopoly Bureau according to the approved Provisions on the Main Functions, Establishment and Staffing of the Internal Agencies of the Ministry of Commerce. The bureau (i) drafts regulations related to concentrations of undertakings and formulates supporting provisions and documents; (ii) conducts antimonopoly reviews of concentrations of undertakings; (iii) holds antimonopoly consultations to discuss and assess applications for concentrations of undertakings; (iv) conducts hearings, investigations, and reviews; (v) examines cases on concentrations...
of undertakings and deals with violations; (vi) investigates monopoly in foreign trade and acts to minimize damage; (vii) provides guidance to domestic enterprises facing antimonopoly litigation overseas; (viii) organizes consultations and negotiations on competition clauses of multilateral and bilateral agreements; (ix) takes charge of international exchange and cooperation in multilateral and bilateral competition policies; and (x) undertakes the specific work of the Anti-Monopoly Commission of the State Council.

The Anti-Monopoly Bureau of the Ministry of Commerce has six offices under it, namely: (i) general office, (ii) competition policies, (iii) business negotiation, (iv) legal affairs, (v) economic affairs, and (vi) supervision and enforcement.

When the competition law took effect, MOFCOM promptly formulated regulations to enforce it. Specifically, the agency came up with (i) Measures for Notification of Concentrations between Undertakings, (ii) Measures for Review of Concentrations between Undertakings, (iii) Provisional Provisions on Divestiture of Assets or Business during Implementation of Concentrations between Undertakings, (iv) Interim Provisions on the Assessment of the Impact on Competition of the Concentration of Undertakings, and (v) Interim Measures for Investigating and Dealing with Undertaking(s) Reaching Notification Threshold That Need Not File a Prior Notification. These regulations have laid a solid foundation for MOFCOM’s antimonopoly enforcement. MOFCOM has also taken an active role in the review of accepted concentration notifications. From 2008, when the Anti-Monopoly Bureau was established, up to the end of 2010, MOFCOM’s Anti-Monopoly Bureau cleared 189 notification cases; of this total, 182 were approved unconditionally, one was banned, and six were approved with additional restrictions. MOFCOM has also carried out international exchange to establish and improve bilateral cooperation and actively participated in seminars held overseas by international organizations and antimonopoly enforcement authorities.

**Conflict and Coordination between Antimonopoly Enforcement Authorities**

Although antimonopoly powers appear to be well divided among the three antimonopoly agencies in the PRC, the antimonopoly functions of these agencies overlap. In individual cases, it is often difficult to determine whether price monopoly or non-price monopoly is involved. Conflicts in regulation arise between SAIC and NDRC in such instances. The three antimonopoly enforcement authorities are also structured in such a way as to allow enforcement powers to shift between departments—an inefficient arrangement that entails high enforcement costs. Moreover, instead of antimonopoly enforcement standards that are uniformly applied throughout the country, to guarantee the fairness and seriousness of the antimonopoly measures, standards are nonuniform and the results possibly even contradictory between departments. This lack of uniformity, the inevitable consequence of the overlapping structure of antimonopoly enforcement, can seriously damage the credibility of the antimonopoly authorities and thus undermine the implementation of the competition law.

The sharing of antimonopoly enforcement by three agencies in the PRC can weaken the overall antimonopoly effort and dilute the government’s antimonopoly powers. If the relevant agency fails to investigate serious cases of monopolistic acts promptly and cannot restore fair and free competition, the whole market economy suffers. On the other hand, while dividing the antimonopoly enforcement powers may not be conducive to the effective handling of monopoly cases, a new and unitary antimonopoly enforcement authority cannot feasibly be created at this time, given the short period that the current political system in the PRC has been in force. For now, the most viable option for the central government is simply to continually improve the antimonopoly enforcement mechanism, particularly by strengthening the coordination among the three antimonopoly agencies.
With the Anti-Monopoly Commission of the State Council closely coordinating their efforts, the three agencies can boost their mutual exchange, share information, and optimize the results of their operations. Also, by pooling their resources when handling major monopoly cases and by unifying their antimonopoly enforcement standards, they can continuously enrich the antimonopoly experience and enforce the competition law even more vigorously and successfully.
Influence of the Competition Law on the Financial Industry

The financial industry mirrors the overall performance of the national economy and the individual well-being of the people. Given this industry’s importance to economic life in the PRC, knowing how its three pillars, namely, the banking, insurance, and securities industries, will be affected by the PRC’s competition law is of paramount importance.

Current Conditions in the Financial Markets of the People’s Republic of China

Banking Industry

The banking industry in the PRC has been advancing along with the market-oriented reforms being pursued by the central government. Ever since the founding of the new PRC, its economic system has undergone major changes. The most far-reaching change so far has been the country’s move from a highly centralized planned economic system to a planned commodity economy, and then to the present-day socialist market economy. Together with this economic transition, the PRC’s banking industry has evolved from a complete monopoly of the People’s Bank of China (PBOC) to a high monopoly of four state-owned specialized banks, then to the commercialization of these state-owned specialized banks, and now to the creation and growth of numerous joint-stock commercial banks.

Structure of the banking industry. More than 3 decades of reform and progress have defined the structure of the PRC’s banking industry. State-owned commercial banks still are the PRC’s principal banks, alongside and in competition with other state and foreign banks. By the end of 2011, the PRC banking industry comprised the following: (i) 2 policy and state development banks, (ii) 5 large commercial banks, (iii) 12 joint-stock commercial banks, (iv) 144 urban commercial banks, (v) 212 rural commercial banks, (vi) 190 rural cooperative banks, (vii) 2,265 rural credit cooperatives, (viii) 1 postal savings bank, (ix) 4 asset management companies, (x) 40 foreign financial institutions, (xi) 66 trust companies, (xii) 127 enterprise-group finance companies, (xiii) 18 financial leasing companies, (xiv) 4 currency brokerage companies, (xv) 14 auto financing companies, (xvi) 4 consumer finance companies, (xvii) 635 village banks, (xviii) 10 finance companies, and (xix) 46 rural fund cooperatives.

There are about 3,800 legal financial institutions with 3.2 million employees in the PRC’s banking industry. According to the 2011 CBRC Annual Report (CBRC 2011b), 47.3% of the capital of the banking industry is in large commercial banks; 16.2%, in joint-stock commercial banks; and 15.2%, in rural small- and medium-sized financial institutions and postal savings banks. Although the four state-owned commercial banks still have a large market share, this share has been declining. In contrast, the market share of the other types of banks has been increasing. The increasing market
share of joint-stock commercial banks indicates that, with the admission of foreign banks into the 
PRC and with changes in banking policy in the PRC, the highly oligopolistic market structure of 
state-owned commercial banks is gradually dissipating. The PRC’s banking industry is clearly moving 
from a monopolistic to a competition-driven market structure. With the continuous implementation 
of shareholding reforms, joint-stock commercial banks have been gradually increasing, and the 
continuing expansion of urban commercial banks has made them more and more important to the 
various regional economies in the PRC.

**Development of foreign banks and financial institutions.** By the end of 2011, (i) 181 banks 
from 45 countries and regions had established 209 representative offices in the PRC; (ii) banks from 
14 countries and regions had established a total of 37 solely foreign-funded banks in the PRC, with 
245 subsidiary banks; (iii) two joint-venture banks, with a total of seven subsidiary banks, and one 
solely foreign-funded financial company had been set up; and (iv) 77 foreign banks from 26 countries 
and regions had established 94 subsidiary banks in the PRC (Table 1). Foreign banks have widened 
their branch network from 20 cities in the PRC in early 2003 to 27 provinces and 50 cities today. Six 
foreign corporate banks have also been permitted to establish subsidiary banks in cities and counties 
with export-oriented enterprise concentration within the administrative area of the cities where 
they are located. Thirty-five foreign corporate banks and 45 foreign subsidiary banks have been 
allowed to operate renminbi business; 25 foreign corporate banks and 25 foreign subsidiary banks, 
to engage in financial derivatives product trading business; and five foreign corporate banks, to issue 
renminbi financial bonds (CBRC 2011b).

<table>
<thead>
<tr>
<th>Item</th>
<th>Foreign Banks</th>
<th>Solely Foreign-Funded Banks</th>
<th>Joint-Venture Banks</th>
<th>Solely Foreign-Funded Financial Companies</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head office of corporate institution</td>
<td>0</td>
<td>37</td>
<td>2</td>
<td>1</td>
<td>40</td>
</tr>
<tr>
<td>Branch and subsidiary of corporate institution</td>
<td>0</td>
<td>245</td>
<td>8</td>
<td>0</td>
<td>253</td>
</tr>
<tr>
<td>Branch of foreign bank</td>
<td>94</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>94</td>
</tr>
<tr>
<td>Total</td>
<td>94</td>
<td>282</td>
<td>10</td>
<td>1</td>
<td>387</td>
</tr>
</tbody>
</table>

Source: CBRC (2011b).

By the end of 2011, the foreign banks operating in the PRC had about CNY2.15 trillion in general 
assets, with year-on-year growth of 23.6% (Table 2). Various outstanding deposits amounted to 
CNY1.32 trillion (a 25.3% increase over 2010), and various loan balances totaled CNY978.5 billion (a 
7.1% increase). The liquidity ratio stood at 69.5%, with achieved after-tax profits at CNY16.73 billion; 
the nonperforming-loan ratio, at 0.4%; and the capital adequacy ratio of foreign corporate banks, 
at 18.8%, with the core capital-adequacy ratio at 18.4%. Overall, the leading indicators of foreign 
banking institutions operating in the PRC are above regulatory requirements (CBRC 2011b).
Insurance Industry

As a major branch of the financial industry, the insurance industry has progressed considerably since domestic business in the PRC recovered in the 1980s. That same year, the insurance business also recovered, making itself an important component of the national economy. Before that, there was only one insurance company in the entire PRC—the People’s Insurance Agency. Monopolizing the domestic insurance market, it was the sole provider of property and personal insurance service. Ping An Insurance of China was established in 1988, followed by the Pacific Insurance Agency in 1991. Their entry ended People’s Insurance Agency’s monopoly of the insurance market. Reorganized in 1998, the People’s Insurance Company of China spun off its property insurance operations from its life insurance operations, while Ping An Insurance and China Pacific Insurance operated separately. Three insurance companies therefore operated in competition with one another.

The PRC’s entry into the World Trade Organization (WTO) saw an increase in foreign-funded insurance companies and joint ventures in the PRC. The market shares of domestically funded insurance companies declined, further boosting the competition among insurance companies. All this time, the PRC’s insurance market structure had relatively high concentration. People’s Insurance Company of China, China Life Insurance, Ping An of China, and China Pacific Insurance had cornered more than half of the market. The PRC’s entry into the WTO, however, gradually opened up the insurance market, allowing more than 50 foreign-funded insurance companies to grow in the PRC even as small- and medium-sized domestic insurance companies rapidly evolved as well. While competition among insurance companies is becoming increasingly fierce, market concentration is rapidly declining. Since 2010, the insurance industry in the PRC has been progressing with great momentum. By the end of 2010, premium income in the whole country amounted to CNY1.47 trillion, with year-on-year growth of 33%. The property business had likewise maintained its rapid growth, earning a total premium income of CNY389.4 billion and posting year-on-year growth of 35%. On the other hand, the premium income on personal life insurance totaled CNY1.08 trillion, with year-on-year growth of 31%. By the end of 2010, therefore, the PRC’s insurance industry had total capital of CNY5 trillion and total profits of CNY60.7 billion. An important consequence of this growth is greatly intensified competition in the industry—a major challenge for the insurance companies but one that the insurance market needs to keep from running afoul of the PRC’s competition law.


Securities Industry

The founding of the Shanghai and Shenzhen exchanges in 1990 marked the birth of the PRC’s securities industry. The split-share reform in 2005–2006 and the launch of stock index futures and securities margin trading in 2010 are of great significance to the industry. And regulatory agencies have been continually enhancing their capabilities against insider trading, indicative of their determination to standardize the securities market environment.

The stockbrokerage business is expanding quickly, but with only a slight growth in business volume. As stock accounts steadily increase, the growth rate of fund accounts is falling back. The market concentration of the stockbrokerage business is on a downward trend, and stock income still depends largely on stock-market quotes. The commission rate of the stockbrokerage business has been down since 2002. However, as the market grows and policies change, the domestic stock exchanges skyrocket, and so does the number of stockbrokers and investment advisers. In 2010, there were 106 securities companies in the PRC with CNY1.97 trillion in total capital. There was an equal number of securities companies in 2009, but with total capital of CNY2.03 trillion, 3% more than in 2010. The average total capital of each broker is CNY18.59 billion. Securities companies had net assets totaling CNY566.4 billion in 2010, posting year-on-year growth of 17.1%, and the net assets of each broker stood at CNY534 billion (Table 3).

<table>
<thead>
<tr>
<th>Index</th>
<th>2010</th>
<th>2009</th>
<th>Year-on-Year Growth (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating revenue</td>
<td>191.1</td>
<td>205.0</td>
<td>(6.8)</td>
</tr>
<tr>
<td>Net income of securities business agents</td>
<td>108.5</td>
<td>141.9</td>
<td>(23.5)</td>
</tr>
<tr>
<td>Net income of securities undertakings and recommendations</td>
<td>27.2</td>
<td>15.2</td>
<td>78.9</td>
</tr>
<tr>
<td>Net income of asset management business of trustees</td>
<td>2.2</td>
<td>1.6</td>
<td>37.5</td>
</tr>
<tr>
<td>Income from portfolio investment (including fair value change)</td>
<td>20.7</td>
<td>23.2</td>
<td>(10.8)</td>
</tr>
<tr>
<td>Net margin</td>
<td>77.6</td>
<td>93.3</td>
<td>(16.8)</td>
</tr>
<tr>
<td>Total assets</td>
<td>1,970.0</td>
<td>2,030.0</td>
<td>(3.0)</td>
</tr>
<tr>
<td>Net assets</td>
<td>566.4</td>
<td>483.9</td>
<td>17.0</td>
</tr>
<tr>
<td>Net capital</td>
<td>431.9</td>
<td>383.2</td>
<td>12.7</td>
</tr>
</tbody>
</table>

( ) = negative.
Source: Securities Association of China (2011).

The stock market trend was weaker in 2010 than in 2009: a huge decrease in the stock brokerage commission rate lowered brokers’ profit in 2010. Net revenues of securities companies in 2010 stood at CNY191.10 billion, 6.8% below the 2009 figure. Their net margin of CNY77.6 billion was also lower by 16.8% year-on-year. Despite the reduction in profit margins, however, all 106 securities companies posted profits in 2010. The 12 securities companies and their foreign shareholders are listed in Table 4.
Influence of the Competition Law on the Financial Industry

Analysis of Monopoly in the Financial Industry of the People's Republic of China

With the implementation of the competition law, monopoly behavior in the PRC’s financial industry is now being closely regulated. What follows is a discussion of monopoly behavior in the financial industry.

Manifestations of Monopoly in the Financial Industry

Monopolistic Agreements

Chapter 2 of the competition law expressly prohibits monopolistic agreements. Monopolistic agreements in the PRC’s banking, insurance, and securities industries are analyzed below.

Monopolistic agreements in the banking industry. Under the guidance of a trade association, it is easy for the banking industry to fix a uniform price—which means a price not borne out of market competition—on a certain service with its business partners. Some banks have tried in recent years to form uniform price mechanisms in their services, such as loans and intermediation, mainly to make up for losses caused by fierce horizontal competition. Arrangements of this kind touched off provisions of the competition law that prohibit monopolistic agreement.

For example, on 1 June 2006, the cross-bank transaction fee for bank cards was questioned. Several media outfits, including the Xinhua News Agency, asked if this was indeed an “international convention” or “monopolistic behavior.” When the formulation of this charging standard was looked into, it was determined that the cross-bank fee for bank-card queries was, in fact, only the result of consultations between China Union Pay and the big banks, and that the fee was implemented without the prior approval of customers. There are many similar questionable charges, such as management fees for petty-cash accounts, credit-card annual fees, and cross-bank ATM fees. Price

<table>
<thead>
<tr>
<th>Company</th>
<th>Overseas Shareholder</th>
</tr>
</thead>
<tbody>
<tr>
<td>China International Capital</td>
<td>Morgan Stanley International</td>
</tr>
<tr>
<td>BOCI Securities</td>
<td>BOC Holding International</td>
</tr>
<tr>
<td>Everbright Securities</td>
<td>China Everbright Holding</td>
</tr>
<tr>
<td>CLSA Asia-Pacific Markets</td>
<td>CLSA</td>
</tr>
<tr>
<td>Daiwa SSC Securities</td>
<td>Daiwa Securities</td>
</tr>
<tr>
<td>Goldman Sachs Securities</td>
<td>Goldman Sachs</td>
</tr>
<tr>
<td>UBS Securities</td>
<td>SBC</td>
</tr>
<tr>
<td>Credit Suisse Founder Securities</td>
<td>Credit Suisse</td>
</tr>
<tr>
<td>Zhong De Securities</td>
<td>Deutsche Bank</td>
</tr>
<tr>
<td>Huaying Securities</td>
<td>The Royal Bank of Scotland Group</td>
</tr>
<tr>
<td>Morgan Stanley Huaxin Securities</td>
<td>Morgan Stanley (Asian)</td>
</tr>
<tr>
<td>J.P. Morgan First Capital Securities</td>
<td>Morgan Datong Brokerage (Hong Kong, China)</td>
</tr>
</tbody>
</table>

competition is in principle a basic form of market competition, but many big banks have formed price associations through agreements. This monopolistic behavior violates the competition law (Xi Yuemin 2008).

**Monopolistic agreements in the insurance industry.** In the PRC, insurance clauses and premium rates are strictly examined and must be approved by the insurance regulator. Therefore, the possibility of insurance companies achieving monopolistic agreement on premium rates is minimal. In reality, however, it is common practice for the insurance association to formulate regulations that have the actual effect of monopolistic agreement. Regulations to fix price are an example: the insurance association usually fixes a particular price simply through a resolution. This, in fact, is the most common procedure for fixing the floor price for insurance products and services.

Another example is the regulation of market segmentation. The insurance association determines, also through a resolution, the scope of operation of an insurance company and the region where it can do business. A third example is the regulation of industrial standards, such as the underwriting standards for serious illness and the statutory automobile liability insurance (SALI) clause. Mass collaboration through insurance association makes it easier to come up with standardized products and to form an actual price alliance.

**Monopolistic agreements in the securities industry.** These are manifested mainly in horizontal pricing agreements and market manipulation. A horizontal pricing agreement usually refers to a “price alliance” or “price cartel.” For instance, in 2002, the Shenzhen futures industry association held a special meeting to contain cutthroat competition in the handling charge and formulated the standard lowest handling charge for brokerage. Since then, a price alliance among Shenzhen futures commission merchants has existed. In market manipulation, some traders play a common market price and form a market monopoly to ruin large accounts. This damages the credibility of the market, thus adversely affecting the market’s survival and maturity. Interestingly, some financial enterprises may even resort to an extraordinary arrangement to be exempted from the competition law. Their main argument is that such an arrangement improves efficiency and enhances competition among small- and medium-sized financial institutions (Rao Yuehong 2009). However, the competition law’s 15th regulation provides that enterprises seeking such exemption should prove that arrangements of this kind will not seriously restrict competition.

**Abuse of Market Dominance**

The competition law’s sixth clause provides that market-ascendant operators should not abuse their market dominance to exclude and restrict competition. Chapter 3 of the competition law specifically prohibits the abuse of market dominance. Abuse of market dominance in the banking, insurance, and securities industries in the PRC is analyzed below.

**Abuse of market dominance in the banking industry.** In the PRC, abuse of market dominance in the banking industry is manifested mainly in three respects: (i) restraint in the opening of bankbooks, (ii) restraint on small enterprises seeking to open a bank account, and (iii) unreasonable terms for personal housing mortgage loans (Rao Yuehong 2009).

First, banks impose restraint in the opening of bankbooks because they can impose and derive additional charges from bank cards. With the continued decline in the deposit-loan surplus, the bank-card business has become the main source of profit for commercial banks. Therefore, although customers should be able to choose freely between a bankbook and a bank card, banks often disallow such choice or place extra difficulties in the way of clients who prefer bankbooks over bank cards.
Second, banks impose restraint on small enterprises seeking to open a bank account. By regulation, small enterprises need to open an account after registration. However, commercial banks make it extremely difficult for a small enterprise to do so by imposing stringent restrictions, such as demanding a statement of outstanding obligations and of certain levels of capital fund. For instance, the minimum requirement for opening a basic deposit account for an enterprise is CNY0.5 million to CNY1 million. In addition, small enterprises are required to maintain an account balance of between CNY30,000 and CNY0.5 million; large enterprises, in contrast, are exempt from this requirement. Commercial banks impose this requirement because they consider small enterprises to be a relatively higher operational risk because of their very limited capital (Xue Xiujie 2011).

Third, banks append unreasonable terms to contracts for personal housing mortgage loans. Individual home buyers can usually obtain loans from banks specified by real estate developers, but the contract they have to sign with the bank includes many unfair terms such as VIP client application, credit-card transaction, and fund purchasing. Although this contract is supposedly to be signed on the basis of mutual consent, customers actually cannot choose to negotiate with the bank. They can only accept the contract or give up getting the housing loan from the bank altogether.

Abuse of market dominance in the insurance industry. Market dominance refers to domination or control of a certain market by an enterprise, allowing it to restrain competition and generate huge monopoly profits. This is why in practically every country, the competition law strictly prohibits the abuse of market dominance. In the PRC, however, the insurance industry market is relatively concentrated. In 2004, for instance, the market share of China Life Insurance reached 51.5%. The competition law does not prohibit an insurance company from obtaining market dominance, but a dominant insurance company can abuse its ascendancy and damage the interests not only of its customers but of other insurance companies as well. The company can do this through such exploitative practices as price monopoly, differentiated treatment, trade rejection, and mandatory trade. The exploitative practice can also take the form of obstructive abuse, such as restricting competition so as to squeeze out other insurance companies, or unreasonably expanding the ascendant operator’s market advantages to other applicable markets. On the whole, however, the main manifestation of market dominance in the insurance business is predatory pricing.

Abuse of market dominance in the securities industry. The main manifestation of abuse of market dominance in the securities industry is the monopoly on the operations of the portfolio investment fund industry. In 2002, during the second international seminar of the PRC fund market, economist Wu Xiaqiu did some fund-industry calculations. The profits of the fund industry, he pointed out, are obtained mainly from its regulations and monopoly status. To get the development of the securities industry started, he recommended reforms in the charging system, intensified competition between industries to initiate large-scale reorganization, and the eventual elimination of many securities enterprises. Necessarily, then, market reform in the fund industry should start with the charging system, and dramatic reductions in fund management and subscription fees should follow. Rather than being made uniform, those fees should be determined competitively. Fund management fees, in particular, should be increased or decreased depending on how well the funds are managed.

Business Concentration

The concentration of business operators can have the effect of eliminating or restricting competition. Therefore, controlling the concentration of business operators is an important concern of the competition law. Chapter 4 of the law provides for the examination of business operators’ concentration. Sample cases of business operators’ concentration in the banking, insurance, and securities industries in the PRC will be looked into next.
Business concentration in the banking industry. With the advent of financial globalization, bank mergers and acquisitions have been sweeping across the globe. For this reason, safeguarding financial security and promoting competition have become important value orientations of the PRC’s competition laws. Since the 1990s, in fact, allowing foreign capital in mergers and acquisitions has gradually become an indispensable way of attracting and meeting the foreign capital requirements of a growing economy. By reforming themselves, domestic commercial banks in the PRC have been able to attract strategic investors from overseas—a development that has become a prime motivating factor for improvements in the corporate governance and overall management of the banking industry. The infusion of foreign capital has diversified the ownership of state-funded banks and strengthened their capital base.

There have been several noteworthy changes in the joint-stock strategy and the mergers and acquisitions strategy of foreign-funded banks in the PRC. First, joint-stock banks continue to increase in scale and in location, gradually expanding from coastal provinces and municipalities into inland areas. Second, joint-stock partners are expanding from commercial banks into other financial institutions such as insurance and fund companies. Third, joint-stock banks are now more diversified. The mechanism for the entry of qualified foreign institutional investors (QFIs) and for the speedier establishment of commercial banks in the PRC has even made it possible for foreign-funded banks to conduct mergers and acquisitions through the securities market (Miao Yan 2007).

The growth of mergers and acquisitions involving foreign capital in the PRC must be examined closely. Transnational mergers and acquisitions of financial institutions could be a way of gaining monopoly status in the host country. Administrative and legal measures for scrutinizing and overseeing banking industry mergers and acquisitions should be strengthened, as these are becoming an increasingly important factor in the country’s financial security (Miao Yan 2007). Also, the scope of mergers and acquisitions in banking has gradually expanded in recent years to include joint-equity banks, urban commercial banks, credit cooperatives, and other small- and medium-sized banks. Competition in the PRC’s banking industry is therefore no longer just between state-funded and foreign-funded banks, but also between and among strategic investors. The competition in this case is therefore both in internationalization and in localization (Guo Chen 2010). The competition law does not expressly prohibit mergers and acquisitions among banks, but, according to the Review Procedures of Business Operators’ Concentration, the commerce department believes that mergers and acquisitions that could eliminate or restrict competition, if they have not already done so, may have to be approved with additional restrictions.

Business concentration in the insurance industry. Mergers and acquisitions among insurance companies have their advantages. They can result in economies of scale, bring about complementary advantages among enterprises, and stimulate the growth of the surviving company. On the other hand, they may also result in the decimation of the insurance companies in the PRC. This is because insurance companies that were originally competitors have now become an interest alliance, effectively reducing market competition. Therefore, to meet the standards stipulated by the State Council for the declaration of concentration of insurance companies, mergers and acquisitions should be declared to MOFCOM in advance.

The relatively large life insurance companies in the PRC are (i) China Life Insurance, with a market share of 31.9%; (ii) Ping An Life Insurance, 15.3%; (iii) New China Life Insurance, 9.6%; (iv) Pacific Life Insurance, 9.4%; (v) Taikang Life Insurance, 8.4%; (vi) PICC Life, 7.9%; (vii) Taiping Life Insurance, 3.1%; and (viii) Sun Life Insurance, 1.4%. This concentration of insurance companies largely influences the market’s competitive structure.
Business concentration in the securities industry. The first wave of mergers among domestic brokers in the PRC took place during the period from 1996 to 2000, which saw the merger of Shenyin Wango Securities and Guotai Junan Securities. In August 2000, the merger and consolidation of the securities departments of five trust companies led to the establishment of Galaxy Securities, which had registered capital of CNY4.5 billion. In July 2001, Guangfa Securities bought Jinzhou Securities, the first stock-holding securities company in the PRC, for a 51% stake. In September 2002, Galaxy Securities used its 24 operating departments, valued at CNY0.2 billion, to acquire a 20% stake in Asian Securities (originally, Three Gorges Securities). These mergers started a trend wherein a comprehensive broker buys another comprehensive broker in the securities industry. However, if the concentration of the financial institutions reaches the threshold stipulated by the State Council, it should be declared in advance to the antitrust enforcement institution. Concentration can proceed only when permission is obtained to do so.

On 1 August 2008, during its 20th executive meeting, the State Council approved the criteria for determining whether business operators that plan to merge need to formally declare their intention and seek approval for the merger. The criteria were embodied in a measure called the Regulation of State Council on Declaration Standard of Business Operators’ Concentration. And on 15 July 2009, on the basis of this measure and in pursuance of the competition law, the method for calculating the financial aspects of mergers that must be declared beforehand was formulated and issued by MOFCOM together with PBOC, CBRC, CSRC, and CIRC. The method was embodied in a measure called the Regulation of State Council on Declaration Standard of Business Operators’ Concentration.

Application of Antimonopoly Regulations

Chapter 5 of the competition law listed the regulations governing abuse of administrative power to eliminate or restrict competition. How these regulations apply to the banking, insurance, and securities industries in the PRC is discussed in this section.

Application of regulations to the banking industry. Administrative monopoly is an outstanding feature of the PRC’s banking industry, a situation that has been widely discussed in academic circles. Monopoly generated in market competition is usually the result of advanced technology and innovation, productivity increase, cost decline, product and service quality improvement, and improvement in the operating management of the enterprises enjoying a monopoly position. However, monopoly in the PRC’s banking industry is largely contingent on administrative power. By virtue of their huge credit resources, it may seem that the commercial banks are realizing huge profits from their credit operations. However, a closer look reveals that these huge credit resources are simply made possible by the government’s dominance of the banking system. This is because, as a whole, the credit policies of the various commercial banks are formulated within the policy framework of PBOC. Therefore, when some enterprises need support, the bank will formulate a loan policy for their benefit. And, in practice, banks are usually controlled by local governments during the examination of their loan programs.

In the case of savings deposits, PBOC usually sets up implicit or explicit limits to prevent enterprises and state-owned commercial banks from saving their resources outside the system. As to the banks’ intermediation business, the government also makes every effort to maintain the monopoly position of state-owned commercial banks. In such a situation, small- and medium-sized banks cannot possibly achieve equal status with the four state-owned commercial banks in central-bank relending and as primary market for the national debt, for the interbank lending market, and for electronic interbank transactions (Lin Limin 2009). Indeed, as the effects of the recent worldwide
subprime crisis reached the PRC, the country’s investment plan of CNY4 trillion was directly decided by administrative agencies. State-owned commercial banks fully supported the investment plan formulated by these administrative agencies—a clear manifestation of administrative monopoly in banking (Sunyi Zheng Yulin 2010).

**Application of regulations to the insurance industry.** In reality, some local governments in the PRC compel people to purchase insurance to accomplish their so-called mission. This is despite the fact that, in 2008, the CIRC issued notices on the Trial Schemes of Rural Small Personal Insurance, specifically requiring insurance companies to insist on “the principle of customer willingness” within the trial operation and forbidding them to directly or indirectly popularize small personal-insurance products. One particular township government required the farmers to purchase insurance, the cost of which would be reflected in the annual assessment; farmers who did not make the purchase would be fined. This clear abuse of administrative power seriously disrupted fair competition in the insurance industry.

**Application of regulations to the securities industry.** There are three major manifestations of administrative monopoly in the securities industry: (i) broker-access monopoly, (ii) stock-market monopoly, and (iii) the examination and approval of futures products and the monopoly of listing location.

*Broker-access monopoly.* Broker access has become a type of monopolistic resource because of the strict industry-access system in the PRC, consistently assuring huge monopoly profits for securities companies during the past several decades. In March 2001, as recommended by the principal underwriter, the PRC began to implement the so-called “access turnover system.” Developed over a 10-year period by securities companies, this system had a profit model that was always about giving the company first access in everything—meaning that it always has top priority in providing customers with access to profits. The modes of access are transaction access (for brokerage) and issuance access (for the underwriting business).

*Stock-market monopoly.* In the PRC, the law specifically provides that state-owned shares and corporate shares are not to be traded in the market. These can only be held singly or mutually by relevant legal persons, thus causing monopoly in their acquisition to some degree. This provision contravenes the basic principle of securities law, which mandates that common investors and so-called strategic investors should be treated equally. In reality, however, certain policies not only grant strategic investors—listed companies, securities companies, investment funds, and other state-owned enterprises—preemption rights to new shares, but also mislead many nonstrategic investors into subscribing to state-owned shares and corporate shares as a result of their lack of understanding of the rules of public ownership, as well as other noneconomic factors. This has led to the current inequitable ownership structure of listed companies in the PRC, where state-owned shares account for about 50%–70% while corporate shares account for only about 20% on the average. Because common traders can subscribe to only about 10%–30% of the shares issued by listed companies in the PRC stock markets, there has been a huge decline in stock circulation.

*Examination and approval of futures products and monopoly of listing location.* In the futures industry, administrative monopoly first manifests itself in the dominance of the CSRC itself as regulator in the examination and approval of futures varieties and in the choice of listing location. The procedures for the examination and approval of listed varieties are very complex and they take extremely long periods of time. And each trading variety can be confirmed only in one exchange, imposing an artificial restriction on competition in the futures industry and preventing the optimum allocation of market resources. Also, administrative monopoly is manifested in the imposition by
Influence of the Competition Law on the Financial Industry

regulators of artificial restrictions on the scope of operations of futures commission merchants, resulting in long-term abnormal changes and in the lack of competition in the futures industry. These forms of administrative monopoly not only restrict competition in the financial industry as a whole but also erode the reputation of the administrative agency. Such abuse of administrative power in order to eliminate or restrict competition in the futures industry must therefore be subjected to legal restraints.

The 32nd clause of the competition law states that administrative agencies and organizations should not abuse their administrative power in order to restrict units or individuals, directly or indirectly, from operating, purchasing, or using products or services provided by legitimate operators. Administrative organs and organizations that are found to abuse their administrative power in order to eliminate or restrict competition will be subject to the applicable legal liabilities under the competition law.

**Damage Caused by Monopoly in the Financial Industry**

As the PRC economy grows, the market activities of the financial industry will have an ever-increasing impact on practically every aspect of economic and social life. The following is a discussion of how monopoly behavior in the PRC’s financial industry can create “bottlenecks” in the economy and thus thwart social progress.

**Monopoly hinders the reasonable allocation of financial resources.** Finance is the core of a modern economy, and the proper allocation, occupation, and use of a nation’s financial resources is crucial to its economic health and well-being. These financial resources being inherently limited, priority in their allocation should be given to undertakings and enterprises that yield comparatively higher rates of return on investment. However, allocation in the PRC is highly inefficient, with large state-owned financial enterprises cornering the vast majority of these financial resources (Cai Qing 2011). In banking, in particular, the arbitrary allocation of financial resources is manifested in the unreasonable restraints imposed on the establishment of regional joint-equity banks. Likewise, the system for setting up commercial banks is extremely difficult and lacks a mechanism for encouraging and promoting competition. State-owned commercial banks enjoy government preferential policy from all sides, such as national coverage, bad-asset stripping, a policy for the cancellation of bad loans, and use of government capital to supplement their funding. The mechanisms for selecting what is superior and eliminating the inferior do not work in the PRC’s financial industry, resulting in fallback operations and risk accumulation by the state-owned commercial banks (Lin Limin 2009).

On the other hand, despite their large amounts of financial resources, big commercial banks and joint-equity banks are unwilling to lend to small- and medium-sized enterprises (SMEs). This unwillingness to lend is undesirable because, with the market economy maturing, SMEs are playing a progressively more important role in creating social wealth, in increasing national tax revenue, in creating jobs, and in invigorating the market. Given their growing capability to support rapid and stable economic growth, they need and deserve bigger capital, and adequate credit capital should be allocated for them in the financial markets. However, SMEs in the PRC typically suffer credit financing problems. In recent years, these problems have been compounded by the growth strategy of state-owned commercial banks of focusing on large enterprises and businesses in the metropolis, resulting in the closure or merger of many bank branches in the countryside. It is therefore not surprising that credit services for SMEs in the PRC have dramatically contracted (Xue Xiujie 2011) and their urgent capital needs are not being met.

**Monopoly weakens the effects of monetary policy.** Monetary policy refers to measures the government or the central bank adopts to influence economic activity so as to achieve certain policy
objectives, such as curbing inflation, realizing full employment, accelerating economic growth, and optimizing resource allocation. If monetary policy is not implemented effectively, the policy objective of stimulating or stabilizing the economy obviously cannot be realized.

The PRC has yet to perfect its use of monetary policy as an instrument for economic development. In general, the implementation of monetary policy, particularly the policy on interest rates, would have an impact on economic activities through the following route: commercial-bank access to financial resources from the central bank, then access to those financial resources by enterprises or individuals. In the PRC, however, interest rates have not been an effective monetary policy tool. Commercial banks, owing to their monopoly position, tend to have little appreciation for what variations in interest rates can do to stimulate or stabilize economic activity. In addition, commercial banks make it difficult for SMEs even to open a bank account, and SMEs in the PRC have very limited access to the financial markets. Therefore, to meet their financial needs, most SMEs resort to borrowing in nonbank markets, where monetary policy often fails to play the expected role. In this situation, monetary policy (the interest rate) has a limited impact on actual economic activities.\(^1\)

**Monopoly obstructs innovation in financial enterprises.** Competition among financial enterprises is fierce in the modern economy. Since the 1970s, financial enterprises in every country have had to innovate to survive inflation and deflation, severe fluctuations in interest and exchange rates, and rapid advances in science and technology. Although financial innovation received the main part of the blame for the recent worldwide sub-prime crisis, the need and demand for global financial innovation has not been dampened. This is particularly the case in countries with mature financial markets, where competition is so fierce that financial enterprises have no choice but to innovate in order to compete and survive (Cai Qing 2011).

At present, however, financial innovation in the PRC is limited. There is an evident mismatch between the financial technology, the quality of staff, and the level of financial innovation in the system. As a whole, the financial industry has the technological capability to absorb, imitate, or transplant the financial innovations of other countries, but local banks appear not to know about these innovations, perhaps owing to the immaturity of domestic finance in the PRC. A more plausible explanation for the seeming lack of awareness is the absence of competitive pressure on the banks to innovate, given their monopoly position (Yang Daguang 2004). This monopoly position is manifested in the absolute ascendancy of the commercial banks in the deposits and loans market for many years. With their huge interest margins as major source of income, it is not surprising that banks in the PRC are not motivated to develop new products and find new avenues of growth. This environment dramatically reduces the business efficiency of commercial banks, leading to the slow maturity of the financial industry—and decreasing its contribution to the PRC’s economic growth.

**Monopoly violates the legitimate rights and interests of consumers.** Financial enterprises belong to a tertiary industry whose main business is to serve the nation’s top financial consumers. For this reason, it is the consumers down the line who are directly disadvantaged by the monopoly behavior of financial enterprises. In banking, for instance, domestic banks have vigorously promoted increases in bank charges and the adoption of such international banking practices as cross-bank ATM withdrawal fees, charges for long-distance withdrawal, charges for checking-account changes, and management fees for dormant accounts.

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1 The very low bank rate set by the central bank, compared with the pace of economic growth in the PRC, also lessens the economic impact of the interest rate as a monetary policy tool.
Take the case of China Union Pay, the interbank clearinghouse for domestic banks. China Union Pay is the fusion of message switching center, terminal service provider, and competitor in acquiring markets. Its market dominance is so strong that some scholars believe that the charging measures formulated by China Union Pay for the supposedly free contractual relationship between a bank and its cardholders are actually superficial. In fact, the price agreement between China Union Pay and various commercial banks is so clearly monopolistic that the contractual freedom of bank-card consumption is virtually nonexistent (Yao Qi 2008). The various unilateral service charges of banks not only impose unnecessary burdens on customers and are contrary to their economic interests but also violate their right to know as consumers of banking services.

This study of monopoly behavior in the PRC’s financial industry, while theoretical, could also describe the present situation. The fact is that since the PRC’s competition law was first implemented, no antimonopoly case has been officially reported in the finance industry. This is probably because the competition law has been in force for just a short time. But this also indicates that the regulation of competition in the financial industry has not yet drawn enough attention from the enforcement agency and from society in general.

It is worth noting here as well that on 26 May 2012, CBRC issued a measure to encourage and guide private capital into the banking sector and strengthen financial support for private investment through the creation of a stable business environment. That measure is titled Encouraging and Guiding the Implementation of the Views of Private Capital into the Banking Sector. The measure enjoins banking regulatory agencies at all levels to encourage various types of eligible investors to invest in the shares of banking institutions. CBRC further stated that since no limits on private capital investment targets or investment scope are set in the law, the measure will promote effective competition in the PRC’s banking segment, aside from protecting consumer welfare.

**Supervision by the Financial Industry Regulatory Authority**

Different countries have adopted different approaches to financial industry regulation. In the case of the PRC, the three financial sectors are regulated separately—the banking industry by CBRC, the insurance industry by CIRC, and the securities industry by CSRC.

**Supervision of Monopoly Behavior in the Banking Industry by the China Banking Regulatory Commission**

The PBOC exercises the functions of a central bank, while CBRC is responsible for micro regulation and daily management. As a public institution directly under the State Council, CBRC supervises and manages all financial institutions in their banking and other business activities. Its regulation objectives are as follows: (i) to safeguard the lawful rights and interests of depositors and other clients through prudent and effective regulation; (ii) to maintain the confidence of the public in banking; (iii) to promote public understanding of the risks involved in financial products and services; (iv) to reduce financial crimes in banking; and (v) to maintain financial stability (CBRC 2011b). Therefore, although the establishment of a competitive market structure and the improvement of the efficiency of economic operations are not among its goals, CBRC also regulates competition.

**Main regulatory work of the China Banking Regulatory Commission.** In 2011, in line with the decisions and arrangements of the Central Committee, CBRC vigorously supported the PRC’s efforts to accelerate scientific progress and economic growth. It also played an important role in
safeguarding the PRC’s economic and financial security, particularly in keeping watch over the risks brought about by the international financial crisis. First, CBRC implemented macro-control policies and boosted its financial support for key links of the economy and society, continued to strengthen financial services to small enterprises and to agricultural activities, and supported housing indemnity and green loans.

Second, CBRC improved risk regulation in key sectors and vigorously pushed for the implementation of new loan regulations. Specifically, it aimed to (i) clear all loans from the financing platform of local governments; (ii) guide financial institutions implementing state control of real estate in preventing and minimizing credit risk; (iii) continuously standardize the cooperative business and augment supervision of financial services; (iv) strictly standardize and rectify billing services; and (v) improve the implementation of new loan regulations to prevent the spread of private-lending risk into the banking system.

Third, CBRC further strengthened customer protection. It also continued to supervise financial institutions and urge them to improve their financial services by standardizing the pricing mechanism for banking fees, enhancing the inspection and clearing of charge items, and supervising and urging financial institutions to enhance their marketing management and intensify their development orientation.

Fourth, to improve regulatory efficiency, CBRC worked to refine the regulatory framework of supervision. It continuously urged the administration to improve the regulatory framework by (i) calling for the implementation of new internal regulatory standards, (ii) continually refining supervisory regulations for managing risks in banking, and (iii) standardizing banking operations. CBRC also issued a series of policy documents regulating various banking services, among them a measure titled Supervision and Administration Methods on Credit Card Business of Commercial Bank (No. 2 CBRC 2011).

Fifth, CBRC vigorously improved international regulatory cooperation. To increase cross-border regulatory cooperation, it signed collaboration memorandums or agreements with the banking regulatory bureaus of Argentina, Chile, Cuba, Cyprus, Guernsey, and the United Arab Emirates. To date, CBRC has signed memorandums of regulatory cooperation with financial regulators from 48 countries and regions, and has participated actively in various multilateral and bilateral meetings. In June 2011, the International Advisory Council of Banking Regulatory Commission held its ninth meeting in Beijing. In November 2011, CBRC held the Joint Conference of China Construction Bank Supervision, during which it exchanged banking information with the financial regulatory institutions of other countries and regions, and signed agreements on better means and methods of banking regulation.

Sixth, CBRC committed to stick to a risk baseline and to plan its regulatory work for 2012. On 1 July 2012, CBRC held a regulatory conference that defined the following objectives of CBRC for 2012: (i) to raise the relevance of risk prevention; (ii) to highlight potential credit and liquidity risks and strengthen risk prevention; (iii) to continuously improve financial services and thereby promote the scientific advancement of the real economy; (iv) to optimize the economic structure and balance growth between regions; (v) to continuously advance the reform and transformation of policy banks, savings banks, rural credit cooperatives, and asset management companies; (vi) to improve legal supervision and scientific supervision, as well as enhance regulatory collaboration; and (vii) to promote team building as a means of strengthening internal management (CBRC 2011b).
Role of the China Banking Regulatory Commission in antitrust supervision. As carriers of the social payment system, banks are fragile entities that are highly vulnerable to liquidity risks. CBRC therefore seeks to prevent and defuse the financial risk through prudent supervision of the banks, through mandatory information disclosure to safeguard the rights and interests of creditors, and through the creation of a stable environment for fair and orderly competition. Its regulation of monopoly behavior in banking helps stabilize financial order, strengthen macro-control of banks, and promote competition among small- and medium-sized operators.

The competition law aims to safeguard free competition in the PRC. As for pricing by a monopolistic service, the competition law simply ensures that the price is not unilateral but competitive with that offered by other operators in the industry. The rationale of the price itself is not within the purview of the competition law. However, to institute a special banking function such as a universal service, CBRC may permit cross-subsidy by some operators to the exclusion of other operators outside the market.

Obviously, in the case of banks, it would not be feasible for an enforcement agent of the competition law to base its regulatory supervision only on the general provisions of the law. CBRC is more familiar with and has a clearer understanding of this industry; on top of this, it also has a richer professional experience and stronger information advantage. In contrast, law enforcement by the antimonopoly enforcement authorities focuses more on maintaining competition in an industry on the basis of its original market structure. The situation in the banking industry is vastly different, however, so it would be extremely difficult for mere law enforcement to compel the banking industry to change toward fair and orderly competition desired for industries in general. All of these considerations were taken into account in the decision of the central government to be more flexible in enforcing the competition law for the banking industry, as discussed below.

To begin with, the monopoly behavior stipulated in the competition law is of a particular kind that differs from that in other industries. Operators in banking can gain industry ascendancy without restricting competition; this way, they do not violate the competition law and, hence, cannot be penalized by the enforcers of the law. On the other hand, by virtue of its extensive regulatory rights over banks, CBRC can impose restrictions on banks without invoking the competition law. This is because the more broadly defined competition law also includes antimonopoly regulations that are found in the industry’s laws. In the PRC’s banking industry, besides the large commercial banks with a strong monopoly position, there are many other financial institutions in what has been described as a “confused fighting” state that must be effectively regulated. CBRC will be more qualified than the enforcement agents of the competition law to deal with these problems for it can break the undesirable monopoly market structures through market access adjustments and loose permission as well as through the promotion of a more competitive market (He Yuqun 2011).

Disadvantages of the China Banking Regulatory Commission in antimonopoly supervision. The powers and objectives of CBRC plainly indicate that its main concern is the stability of the banking system. Generally speaking, since antimonopoly regulations are uncommon in the PRC’s banking laws, the banking regulatory institution would not be well versed in antimonopoly enforcement. Even if there were a specific antitrust regulation in banking, it could hardly ensure the effective implementation of the competition policy especially if it is in conflict with industry policy. Strengthening the independence of the banking regulatory institution in competition law enforcement needs to be seriously considered for several reasons.

First, there is a conflict of interest between competition law enforcement and banking industry regulation. To some extent, the competitiveness of banking is inversely proportional to the regulatory power of the banking regulatory institution. This means that the banking regulatory institution will
have more power when there is a monopoly situation in the banking industry in the first place. There would therefore be a strong temptation for the banking regulatory institution to safeguard its power by simply being negligent in supervision or, even worse, by finding ways and means to maintain the very monopoly situation that ensures its existence.

Second, for obvious reasons, the banking regulatory institution will primarily be staffed with banking experts. This being the case, they can be expected to understand and be sympathetic to the behavior of those they are supposed to regulate. There is thus a situation in which the regulators would be naturally inclined to view the situation from the standpoint of the regulated. The extent and possible implications of this interlocking relationship between the regulator and the regulated can indeed be very disturbing. For example, Shang Fulin, the president of CBRC, was once the director of the Agricultural Bank of China, while Zhou Mubing, vice president of CBRC, previously worked for the Industrial and Commercial Bank of China.

Third, supervision of banks by CBRC can easily run into a tangle, for the interests of the regulator and those of the regulated are not polar opposites. Thus, there will always be a strong temptation for CBRC to form an interest community with strong bank operators. This is something that is highly unlikely to happen in the case of a disadvantaged consumer association or trade union organization making a similar interest alliance with an antagonized manufacturing company.

According to its charter, CBRC is “responsible for daily management of the board of supervisors of major banking financial institutions.” It is a unique case of a state-owned entity that is the regulator itself taking the driver’s seat in banking as well. It is therefore not surprising for CBRC to be reduced to the role of just instituting values formation and appreciation among those it is supposed to regulate. As Stigler (1983) wrote in *The Organization of Industry*, “control is usually earned by the industry itself. The design and implementation of control serves the interest of the industry it controlled.” Another complicating factor is that the operators evidently know the scope and limits of the authority of the regulators, thus increasing the possibility of rent-seeking behavior and decreasing its cost to the regulated. The likelihood that regulators will be tempted to accept bribes is therefore very high (Yang Daguang 2004).

**Supervision of Monopoly Behavior in the Insurance Industry by the China Insurance Regulatory Commission**

CIRC is the regulatory institution for the PRC’s insurance industry. This public institution, founded in November 1998, is directly under the guidance of the State Council. Following the administrative management function granted by the State Council and the applicable laws and regulations, CIRC is responsible for supervising and managing the insurance market to maintain the legal and stable operation of the insurance industry. Before its founding, the 14th Session of the Standing Committee of the 8th National People’s Congress, on 30 June 1995, passed the Insurance Law. This law has the following three objectives: (i) to standardize insurance activity, (ii) to safeguard the lawful rights and interests of insurance activity, and (iii) to improve supervision and management of the insurance industry and to promote its healthy growth.

All activities in the PRC’s insurance industry must abide by the basic regulations of the Insurance Law. The seventh clause of the law stipulates that “insurance companies must follow the principle of fair competition in the conduct of their business…. Illicit competition is prohibited.” Section 2, Article 71, provides that “when the financial regulatory management department is examining the
application for an establishment, it should take into account the development of insurance value and the requirements of fair competition.”

The financial regulatory department is empowered to safeguard fair competition among insurance enterprises according to the provisions of the Insurance Law. This law, revised in October 2002 and again in February 2009, highlights the maintenance of fair and orderly competition in the insurance industry. This is consistent with the original regulations in the Insurance Law of 1995. Article 116 in the earlier version of the law stipulated that “an insurance company and its staff are prohibited from damaging the business reputation of its competitors by fabricating and spreading false information about its insurance activities or from disturbing order in the insurance market through illicit competitive behavior.” Further, Article 136 of the 2009 version stipulates that “when the insurance regulatory management institution of the State Council is examining and approving relevant insurance clauses and premium rates, it should observe the principle of protecting the public interest and of preventing illicit competition.”

As an insurance regulatory institution, CIRC is responsible for maintaining fair and healthy competition in the insurance market. The scope of its authority and responsibilities is discussed below.

**Main regulatory work of the China Insurance Regulatory Commission.** The regulatory work of CIRC involves personal insurance supervision, insurance intermediary supervision, and property insurance supervision.

In 2011, the general direction of CIRC’s personal insurance supervision covered the following: (i) implementation of the working principles laid down at the national insurance supervision conference; (ii) focus on the overall requirement of mode transformation, standardization, risk reduction, and steady growth; (iii) structural adjustment to accelerate the transformation and development of the industry mode; (iv) market order standardization as working focus, with risk prevention as starting point; and (v) establishment of a foothold to create an environment favorable to the industry’s healthy and steady growth.

CIRC seeks to achieve the following objectives:

(i) **Institute deep structural adjustment and encourage differential operation.** Implement the provisions of the Regulation Guidance of Insurance Business Processed by Banks and institute deep structural adjustment with the bank insurance business at its core by requiring the full disclosure of insurance premiums, encouraging innovation and the differentiated growth of the insurance companies, promoting the marketization of interest rates and trial sales of variable annuity, and encouraging diversification of insurance products.

(ii) **Stress the key points and improve the standardization of market order.** Correct market reform misinformation, reform the charge payment system for handling outside accounts, strictly investigate and deal with illegal capital formation, and formulate a standardized checking work form to perfect on-site inspection.

(iii) **Improve supervision and risk prevention ability.** Use actuarial science more methodically to improve the assessment and maintenance of the insurance reserve fund, conduct continuous product monitoring, improve internal control supervision, implement the provisions of the Overall Risk Management Implementation Guidance for Personal Insurance Companies, and further refine classification supervision.
(iv) **Promote the insurance business in key areas of coverage and improve service to customers and to the public in general.** Support the endowment and health insurance market and promote trial purchases of small insurance.

(v) **Augment research in insurance system construction and lay the foundation for better insurance supervision and insurance market growth.** Issue regulatory rules on personal insurance coverage, issue the guidelines for the Management Method of Clause and Rate of Personal Insurance, actively promote the formation of insurance trade associations, formulate a new Schedule of Proportion on Disability Degree and Premium Payment of Personal Insurance, formulate a regulatory policy for the postal insurance business, and start regulatory research on solvency categorization.

In 2011, the supervision of insurance intermediaries had the general objective of implementing the lessons learned from the national insurance regulatory working conference. The specific objectives were as follows: (i) to carry out continuous service inspections of insurance intermediaries consistent with legal requirements and in keeping with scientific and effective supervision; (ii) to clean up and rectify the insurance agency market and promote steady reform and innovation; (iii) to prevent and defuse intermediation market risk; and (iv) to promote more widely the growth of the insurance intermediation market.

CIRC’s main roles consist of (i) the realistic and practical execution of the supervision function, (ii) the cleanup and reform of the agency market, (iii) the promotion of reform and innovation in the marketing staff system, (iv) risk management, (v) the refinement of rules and regulations, and (vi) the improvement of fundamental work. CIRC has also strived to encourage innovation and to nurture the market by (i) marketing the PRC’s insurance intermediation capabilities to the outside world, (ii) encouraging mergers and reorganizations, (iii) strengthening capital formation and encouraging financing through the stock market, (iv) encouraging innovation, and (v) encouraging insurance companies to fully utilize the insurance intermediation channel.

In 2011, as suggested by the Party committee, property insurance supervision focused on (i) providing the requirements for “mode transformation, standardization promotion, risk prevention and steady growth”; (ii) scientifically advancing the property insurance industry; (iii) solving the problems that arise from going against the development mode; (iv) improving the relevance and effectiveness of property insurance supervision; and (v) promoting the stable and healthy advancement of national property insurance.

The following strategies were pursued:

(i) **Giving top priority to risk prevention in property insurance and safeguarding the baseline for systematic risk prevention.** Exercising better management of the risk of capital shortage and solvency, strengthening confidential and off-site supervision, and guarding against overseas financial risks.

(ii) **Redoubling efforts to stabilize the property insurance market and to safeguard the interests of both insurer and insured.** In terms of market behavior, giving priority to the prosecution of entities involved in the falsification of business and financial data; in the collection of false agency fees, false indemnity, and false operating expenses; in the setting up of a false reserve fund; and in false underwriting. At the same time, disallowing abnormal premium rates of property insurance. With respect to coverage, doing away with auto and enterprise property insurance; instead, directly serving agricultural insurance and statutory automobile liability insurance (SALI) for the mass market. Stabilizing the insurance industry and closing down large insurance companies that habitually violate regulations.
(iii) Improving supervision regulation by establishing a mechanism for stabilizing the property insurance market and minimizing risk. Continuously refining the standards for property insurance and improving the product management and supervision of auto insurance, SALI, and agricultural insurance. Improving the application of actuarial science to nonlife insurance as well as to the risk monitoring and supervision system for reinsurance and coinsurance. Doing further research into the evaluation index for property insurance to ensure its continuing development, and promoting the marketization of the premium rates for property insurance.

(iv) Improving coordination and building an environment conducive to the further development of the key sectors of the insurance industry. Specifically, improving the capability of insurance service to make a stronger contribution to the social and economic advancement of the country by promoting coverage for agricultural insurance, liability insurance, SALI, and credit insurance; by pursuing the establishment of a catastrophe insurance system; and by improving the absorptive capacity of the professional insurance service.

Supervision of Monopoly Behavior in the Securities Industry by the China Securities Regulatory Commission

CSRC is the legally mandated body that exercises supervision and management of security transactions and issuances in the PRC. Under the direct guidance of the State Council, CSRC exercises unified supervision over the securities market following applicable laws and regulations. Its primary functions are (i) to legally formulate regulations and rules for the management of the securities market; (ii) to implement applicable laws and regulations and to protect the legal rights and interests of investors; and (iii) to conduct overall supervision of the issuance of securities, securities dealing, and the behavior of intermediaries to maintain a fair and well-organized securities market.

In 2010, CSRC (i) adopted a more scientific and progressive outlook in the conduct of its regulatory function; (ii) implemented the plans of the central government for coping with the international financial crisis; (iii) managed market growth as a means of overcoming difficulties; and (iv) seized opportunities for reform and innovation. It also undertook improvements in the securities industry infrastructure and introduced refinements in the market mechanism for securities.

CSRC intensified supervision of the securities market in 2010 to keep its operations stable and healthy. During the year, it pursued the following major regulatory initiatives (CSRC 2011).

(i) Enabling the capital markets to function fully so as to help promote the economic advancement of the nation. For this purpose, CSRC promoted the marketization of mergers and the reorganization of enterprises in the capital market. It issued clear policy guidelines for mergers and for acquisitions of real estate; developed a second securities exchange and supported the growth of the securities market as a strategic new industry; and established the bond market for unified supervision and interconnection.

(ii) Reviewing the market situation for securities and seizing opportunities to promote market reform and innovation. To perfect the operating mechanism for the capital market, CSRC launched a futures stock index and, on a trial basis, launched the securities margin-trading business among securities companies. It also undertook deep structural reform in the issuance of new securities or stocks.
(iii) Prosecuting serious violations of its supervision guidelines and curtailing insider-trading activities. CSRC had to contend with changes in the securities market mechanism due to the advent of globalization, which prompted many listed companies to merge or reorganize. This redirected the focus of CSRC’s market supervision to a spate of insider-trading activities in the securities industry as listed companies merged and reorganized. To cope with the situation, CSRC established a system based on what it calls “integrated management, combination of attack and prevention, and comprehensive prevention and treatment.” Its prompt and decisive actions against insider trading discouraged further attempts to perpetrate the outlawed activity.

(iv) Heightening supervision of the securities market and promoting its steady growth. CSRC improved its supervision of listed companies, promoted the standardized operation of securities companies, pursued innovations in the fund industry, and standardized the operation of securities service institutions.

(v) Following the law strictly in the supervision and management of the market and doing so with transparency. CSRC provided momentum to the administration’s capital-market legislation by prosecuting violators of laws and regulations legally and fairly. To improve market transparency, it carried out a policy of forward information disclosure by the securities industry players.

(vi) Boosting futures management and promoting the futures business. CSRC worked to perfect the system for the PRC’s futures market according to the principle of “solid foundation, cultivation mechanism, supervision enhancement and risk prevention, and [service] for real growth in the economy.” It then promoted the futures market to achieve not only economies of scale but quality improvement as well.

Conflict and Coordination between Antitrust Enforcement and Supervision of the Financial Industry

In the PRC’s financial industry, antitrust regulation is conducted by a special antitrust enforcement institution with powers vested by the competition law. However, the financial industry has its own regulatory agency, which is empowered to maintain fair competition in the industry in keeping with relevant laws and regulations. This regulatory management institution also investigates and prosecutes violations of regulations and laws in the financial industry.

The successful implementation of the law clearly depends on effective enforcement. However, when antitrust regulation and industry supervision intervene in the same market and business as they do in the PRC’s financial industry, management conflict and power play is an ever-present danger. There will certainly be instances when the two institutions will have conflicting assessments of the same suspect market behavior—a situation that could make those assessments highly unreliable, no matter what decision is ultimately made (Yang Dong 2008). Therefore, considering the current state of competition in the PRC’s financial industry and in view of the passage of the competition law, the relationship and the conflict between financial industry supervision and antitrust enforcement have come under serious scrutiny.
Ambiguity of the Relationship between Antitrust Enforcement and Supervision

The competition law is ambiguous on the relationship between the two regulatory institutions, and this ambiguity has created an embarrassing situation in the PRC. The antitrust enforcement institution is legally empowered but has inadequate law enforcement capability. On the other hand, the regulatory institution for the financial industry has the practical experience to enforce the competition law but does not have the legal basis to do so. As a result, there is an inherent conflict between the competition law enforcement institution and the regulatory institution for the financial industry in the discharge of their respective duties.

Varying enforcement characteristics and different areas of focus are exhibited in the respective functions of the PRC’s competition law enforcement institution and its banking regulatory institution, as discussed below.

Comparison of authority. The relationship between the competition law enforcement institution and the banking regulatory institution is inherently complex. To start with, the main task of the competition law enforcement institution is “off-site supervision,” which seeks to prevent market failure by curtailing anticompetitive action or by providing relief to the adversely affected financial entity. The institution applies the general enforcement standard according to modern competition law for such infringements as antitrust agreement, abuse of market dominance, and concentration of business operators. Except for its oversight role in mergers and acquisitions, the function of the competition law enforcement institution is post-supervision. It participates in investigation only when it receives an appeal, or if it believes that competition is adversely affected or it suspects that the merger is not really called for. The competition law enforcement institution therefore has the advantage of having to do relatively little intervention, and can therefore apply the antitrust standard to all business sectors with greater independence and objectivity. In contrast, the main function of the industry regulatory institution is “on-site supervision.” This means directly exercising supervision over price, quantity, and quality so as to minimize industry risk and protect the interest of customers. This supervision is undertaken on the basis of market access formulation, technical data, and established safety standards. The role of the industry regulatory institution is therefore proactive regulation and supervision, as opposed to post-supervision (Kumar 2006).

In terms of authority, the antitrust enforcement institution can gather relevant evidence and keep it in its custody. It can also inquire into an operator’s bank accounts. On the other hand, the banking regulatory management institution can order operators to suspend part of their business, and restrict the transfer of assets and senior managers of a financial institution. In some countries, the antitrust enforcement institution is also vested with quasi-judicial power; this is something the PRC’s industry regulatory institution does not have. In Japan, moreover, the decision of the fair-trading commission has the same force as that of a court of law; the appellate court is Tokyo’s high court, but decisions can still be appealed to the country’s highest court (Shi Jianzhong and Chen Ming 2008).

Comparison of scope and method of regulation. As to enforcement and scope of regulation, the antitrust enforcement institution in the PRC covers the whole economic field, but its regulatory power is limited to the four kinds of monopoly behavior stipulated in the competition law. Even so, with its power to eliminate and correct behavior affecting competition, it can indirectly improve economic efficiency. In contrast, while the banking regulatory institution in the PRC is focused only on banking, it can expand its regulatory power vertically to cover all aspects of banking and intervene directly.
Regarding methods of enforcement and supervision, the antitrust enforcement institution has specific investigation procedures and a processing program that involves limited public participation. In contrast, the banking regulatory institution has special investigation procedures and a general procedure, in addition to having formal and informal investigation techniques for soliciting public opinion widely. Hearings of cases involving price fixing, for instance, invite and involve public participation.

**Comparison of professionalism.** As to the level of professionalism in the discharge of their respective functions, the two regulatory institutions each have their own fine points. The antitrust enforcement institution has the reputation of being good at analyzing the effects of competitive activity; on the other hand, the banking regulatory institution is known to understand better the need for the banking industry to grow and to possess a richer industry enforcement experience. It also has built-in advantages in gathering information about banks and about the banking industry that the antitrust enforcement institution does not have (Khosa 2009).

**Comparison of degree of independence.** In terms of independence, the prevailing view is that regulators in both of the two regulatory institutions can be easily suborned and compromised. Generally speaking, however, the antitrust enforcement institution is viewed as having greater independence because it has neither a direct interest in nor a relationship with the operators in banking. Also, since enforcement of the competition law is basically a post-supervision process, it is comparatively difficult for the enterprise concerned to find out whether it can influence the law enforcers or not (Wang Xiaoye 2010). In contrast, the banking regulatory institution always has greater influence over banking operators. As to the comparative internal pressure of their respective administrative systems, there are no obvious differences between these two institutions in their susceptibility to being influenced or compromised.

**Comparison of policy objectives.** As to their policy objectives, the two institutions are consistently the same in that they are both responsible for maintaining competition, for promoting cooperation, and for coordinating with each other. However, they differ in the emphasis they give to these policy objectives. The antitrust enforcement institution is more focused than the banking regulatory institution on the effort to maintain fair competition and improve the operating efficiency of businesses. On the other hand, the banking regulatory institution gives priority to stabilizing the operations of the banking system and to realizing specific policy objectives, such as the quality of service. For the antitrust enforcement institution, the overriding concern is to evaluate compliance problems from the standpoint of overall social interest. For the banking regulatory institution, on the other hand, the overriding emphasis is on the growth of banking, with the public interest given more importance than the promotion of fair and free competition among banks. For this reason the banking regulatory institution pays more attention to regulating the individual behavior of banks than to improving the whole market structure of banking and fostering fair competition among banks—aspects that, in fact, it largely ignores (Yang Daguang 2004).

**Conflict between Antitrust Enforcement and Supervision of the Insurance Industry**

In carrying out its industry supervision functions, CIRC enforces the insurance law and other applicable laws and regulations to maintain fair and orderly competition in the insurance industry. Its legal mandate is to supervise and manage the national insurance market and to ensure that the insurance industry operates within the bounds of the law and remains operationally stable.
The antitrust enforcement institution of the State Council is also tasked with preventing and restraining monopoly behavior and ensuring fair market competition. Antitrust enforcement work being its legal responsibility, it is empowered to investigate all behavior in violation of the antimonopoly provisions and to conduct enforcement work to ensure fair and free competition. However, the problem is that when it comes to specific monopoly behavior in the insurance industry, both the antitrust enforcement institution of CIRC and that of the State Council are legally empowered to enforce the law. This situation creates conflict between these enforcement institutions and between them and other government agencies.

**Conflict in jurisdiction.** From the perspective of industry supervision, a monopoly case in the insurance industry can, in theory, be resolved by CIRC alone. By simply enforcing the regulations of the competition law, however, the State Council’s antitrust enforcement institution can resolve it as well. It is therefore clear that in the particular case of the insurance industry, there is a conflict of jurisdiction. In some cases, in fact, the industry regulatory institution and the antitrust enforcement institution actually openly compete in enforcement. When there is failure of enforcement, however, it is not uncommon for one of them to blame the other.

**Conflict in enforcement emphasis.** The antitrust enforcement institution of CIRC and that of the State Council also differ in their emphasis on enforcement. To maintain the legal and stable operation of the insurance industry, CIRC restrains illicit competition behavior that could adversely affect industry growth. In contrast, the antitrust enforcement institution is mainly tasked with maintaining fair and free competition among the industry players. These two different goals can coexist and can be pursued independently, but the conflict between the different goals could be so severe in some cases as to create disharmony between the two enforcement institutions.

This dilemma in regulatory enforcement is actually a choice between sacrificing competition to advance the insurance industry and promoting fair competition among the insurance industry operators at the expense of the insurance industry’s growth. As it is difficult to judge with absolute certainty which is the better choice, this matter should be seriously considered and resolved as soon as possible by those who make the country’s economic policy. Until then, conflicts in regulatory enforcement will not be uncommon in the PRC’s insurance industry. In fact, conflict is manifest in the very objectives of the enforcement and regulatory institutions.

In the securities industry, conflict between antitrust enforcement and industry supervision could arise for the reasons discussed below.

The competition law does not specify the nature of the relationship between the antitrust enforcement institution and the industry regulatory institution. This vagueness in legislation inevitably causes conflict in enforcement. Both in theory and in principle, a new law should be superior to the old law, in which case the competition law should be superior to the competition clause in the laws for industry supervision. The problem is that, in the PRC, a special law is considered superior to the general law. When this principle is followed by the industry regulatory institution, it can bypass the application of the competition law.

The implementation by CSRC of the measures contained in the Suggestions of the State Council on the Promotion of Enterprise Merger and Reorganization shortened the approval process for mergers and reorganizations in the capital market. Industries in the PRC could therefore pursue economic concentration, thus increasing international competition among related industries in the PRC.
The concentration of the economy has an impact on fair competition, however. When dealing with domestic antitrust cases, many countries are torn between punishing and condoning monopolies. The many twists and turns in the Microsoft appeal in the US are strong manifestations of the conflict of multiple interests in antitrust enforcement.

In the merger of listed companies in the PRC and in their acquisition by a foreign entity, CSRC and MOFCOM are the most important approving authorities. As a matter of procedure, CSRC examines whether or not the acquisition by a foreign entity will adversely affect the interests of minority shareholders. It then directs all parties concerned to perform the obligatory information disclosure and scrutinizes the application for waiver of tender offer.

On the other hand, MOFCOM is responsible for reviewing possible violations of industrial policy and changes in the nature of the enterprise that could result in industry monopoly, such as a change from domestic enterprise to foreign-investment enterprise. Therefore, although CSRC might approve the application for the acquisition of a listed company by a foreign entity, MOFCOM will determine whether the acquisition will create a monopoly. If MOFCOM refuses to grant permission after this determination, the acquisition cannot proceed. A procedural problem would then arise as to whether the acquiring entity should get prior permission from MOFCOM or receive a tender-offer exemption from CSRC at the outset.

An instructive example is the successful acquisition of China Resources Jinhua. According to the records, China Resources Jinhua announced on 9 June 2003 that MOFCOM had approved the acquisition. Then, on 24 June 2003, the company claimed that it had obtained a tender-offer exemption from CSRC. But even if China Resources Jinhua had not obtained that exemption from CSRC, the purchaser would still be obligated to make the purchase. This is because, as it turned out, approval by MOFCOM practically had no bearing on the acquisition. CSRC should first have examined and verified the application for tender-offer exemption. Had it been disapproved by CSRC, that application should have been reported to MOFCOM for approval once the purchaser had already performed its purchase obligations. However, if MOFCOM had determined that the acquisition would result in industry monopoly or violate the industry policy on foreign capital investments, the acquisition would have been disallowed. Had this happened, the tender offer would have posed a very serious problem without a clear solution.

Coordination between Antitrust Enforcement and Supervision in the Financial Industry

In antitrust enforcement in the financial industry, both the antitrust enforcement institution and the financial regulatory institution have important roles, with each having its own set of advantages and disadvantages. How they should perform their respective roles to achieve the optimum effect of their mandate therefore becomes the key point in effective antitrust enforcement. The regulatory experience of different countries, however, shows that excessive dependence on industry supervision may result in inadequate monopoly supervision. Also, the mutual application of these two systems could lead to overlapping regulation or to conflicting verdicts on the same case, while the application of the competition law alone could create a dilemma owing to the inadequate examination of information. It is therefore extremely important for these two institutions to coordinate closely in the practice of antitrust enforcement and supervision to realize the safe and stable operation of the financial industry.

In terms of the application of substantive law, the competition law is the supreme and final regulatory standard. In case of conflict between the industry law and the competition law, the competition law...
should prevail. However, when the antitrust enforcement institution makes applicable decisions and the industry-competent institution is required to give suggestions, the responsible industry agency should provide suggestions to the antitrust institutions based on the industry law. This is because the decisions of both the antitrust enforcement institution and the pertinent industry enforcement institution are still subject to final judicial examination and supervision. Also, on the premise of unified application of the competition law, operators can report possible monopoly behavior in the financial industry to both the financial regulatory institution and the antitrust enforcement institution for investigation and possible prosecution.

Both the pertinent industry regulatory institution and the antitrust enforcement institution can initiate procedures for examining and punishing monopoly action. In regulating restraint of competition in the financial industry, the competition law is generally applied as the fundamental and primary basis for enforcement. Owing to the distinct character of the financial industry and its great impact on the economy, there is a great need to refine the competition law to make it more definitive and universally applicable to all industries in general (Zhang Zhanjiang 2009). Some suggest that by taking the responsibility of financial authority into consideration, the PRC can adopt the operating framework of “mutual cooperation” in special cases between the financial antitrust enforcement institution and the general antitrust enforcement institution. It can then engage monopoly behavior more promptly and more vigorously, maintain healthy market competition, and protect the rights and interests of customers—outcomes that are usually not possible because of the typically slow action of an antitrust enforcement institution. In addition, by using this framework of mutual cooperation, it can coordinate more effectively the enforcement of antitrust regulations and economic policy, specifically for the financial industry (Zhao Yuanyuan 2010).

In the PRC, the government supervises the financial industry, which covers banking, insurance, and securities. The characteristics and organization of these financial sectors being different from those of the other competitive industries, there is a need for antitrust enforcement in these sectors to be supported by the industry regulatory institution. Otherwise, antitrust enforcement in the financial industry would be very difficult to carry out.

The special status of the financial industry in the national economy has been a major consideration in the decision to establish a financial regulatory institution. Aside from ensuring the unified application of the competition law, the financial regulatory organization is in a good position to make detailed implementing orders that can improve communication, cooperation, and coordination between itself and the competition law’s enforcement institution in regulating anticompetitive activity in the financial markets and promoting their growth.

On 15 July 2009, a draft of the very first special regulation for antitrust enforcement in the financial industry was completed by MOFCOM in cooperation with PBOC, CBRC, CSRC, and CIRC. Called the Calculation Method of Turnover for Declaration of Operators’ Concentration of Financial Industry, the measure was based on the Antitrust Law and the Regulations of the State Council on the Declaration Standard of Operators’ Concentration. The regulation, which showed full understanding of the peculiarity of antitrust enforcement in the financial industry, was issued as soon it was approved by the State Council’s Anti-Monopoly Commission.

In essence, government regulation and antitrust enforcement are two different methods of resource allocation, with many differences in goals and mechanisms and, to some extent, even areas of conflict. To resolve these conflicts, there is a need for an intermediary body between the industry regulatory institution and the antitrust enforcement institution. It was for this purpose that the Anti-Monopoly Commission was created in the PRC. As stipulated in the ninth clause of
the competition law, the State Council established the Anti-Monopoly Commission to organize, coordinate, and guide antitrust work. Its coordinating function can be refined and perfected to establish the cooperative mechanism between the industry regulatory institution and the antitrust enforcement institution.

The dynamics of the relationship between the competition law and the industry regulatory system depends on the level of competitive activity in the financial industry, as well as on the industry’s unique role in the national economy. It is expected that, with the advancement and continuing growth of competitive activity in the financial industry, more and more problems that restrict free competition will be covered by the regulatory scope of the competition law. The role of the industry regulatory system will gradually diminish, but as the regulatory system evolves in this direction, the competitive picture in the financial industry is expected to improve alongside. The regulatory systems should therefore also have the flexibility to dynamically adapt and adjust to changes in the competitive levels in the financial industry (Yang Daguang 2004).
Case Study: Acquisition of Shenzhen Development Bank by China Ping An Insurance Group

Pre-acquisition Background of China Ping An Insurance Group and Shenzhen Development Bank

Ping An Insurance (Group) Company of China

The Ping An Insurance (Group) was founded in 1988 as the first joint-stock insurance company in the PRC. It has since developed into an integrated financial conglomerate that provides diversified financial services in insurance, banking, and investment, and is listed on both the Hong Kong Stock Exchange (HK2318) and the Shanghai Stock Exchange (SH601318). Ping An had total assets of CNY1,032.9 billion and net assets of CNY109.9 billion on 30 June 2010. For the first half of 2010, the business income of the group totaled CNY97.0 billion, and its net income totaled CNY9.9 billion. In terms of profit generated from insurance service, Ping An Life Insurance is the PRC’s second-largest life insurance company, and Ping An Property & Casualty Insurance is the PRC’s second-largest property insurance company.

Ping An Bank, a member of the Ping An Group, is one of the three pillars of the group’s integrated financial services. The group entered banking by acquiring Fujian Asia Bank in 2003, and Shenzhen City Commercial Bank 3 years later. By the end of 30 June 2010, the total assets of Ping An Bank reached over CNY230.6 billion. The bank has head offices in Shenzhen, and business outlets in these major cities, among others: Shenzhen, Shanghai, Fuzhou, Quanzhou, Xiamen, Hangzhou, Guangzhou, Dongguan, and Huizhou. Before its merger with Shenzhen Development Bank, Ping An held a 90.8% stake in the bank.

Shenzhen Development Bank

Shenzhen Development Bank (SDB) is the first publicly listed commercial bank in the PRC. SDB made a public offering of its “A” shares in May 1987 and was formally established on 22 December 1987 with head offices in Shenzhen. Its rapid branch expansion in the last 2 decades has multiplied its economic strength many times over. SDB is now a national commercial bank with more than 300 branches in over 20 highly developed cities including Beijing, Shanghai, Guangzhou, Shenzhen, Hangzhou, and Wuhan. It has set up representative offices in Beijing and Hong Kong, China and has established correspondent bank relations with more than 600 banks in various foreign countries.
and regions. Through its 303 business outlets in 20 major cities, SDB provides diversified financial services to a wide clientele consisting of companies, retailers, and government departments. On 30 June 2010, SDB had total assets of CNY624.4 billion.

Analysis of Transaction and Approval Procedures

After suffering a great floating loss from its investment in Fortis N.V. (30086.AE) in 2008, Ping An rebounded quickly by shifting its strategy from international operations to integration of its locally based resources. Also included in its new growth strategy was a plan to go into new profit growth areas in the succeeding years. The plan was aimed at ensuring increased profitability in insurance services in the next 5 years, and in new bank and asset management growth areas in the next 3–10 years. Under the plan, Ping An would go into the following new profit growth areas in the next 5–10 years: consumption credit, enterprise annuity, new health insurance, new channels, and asset management by a third party. Banking being essential to this group of insurance companies, SDB became Ping An’s logical acquisition target. The acquisition process officially began in 2009, and reviews of the transaction were done in the three steps described below.

Step 1: Ping An’s Acquisition of Newbridge’s Shares in Shenzhen Development Bank

On 13 June 2009, Ping An announced that it had made an external investment through Ping An Life, a subsidiary, so it could subscribe to 370 million up to 585 million new shares in SDB. Ping An purchased the shares from Newbridge Asia AIV III, SDB’s largest shareholder, which held 520,414,439 SDB shares, representing a 16.8% stake in the issued capital of SDB. The announcement indicated that the transactions were pending approval (or exemption) by the pertinent government regulators, particularly CBRC, CIRC, and CSRC.

In accordance with the competition law, MOFCOM first reviewed Ping An’s notification filing with respect to the regulations on the concentration of undertakings. On 26 January 2010, MOFCOM issued its “Anti-monopoly Review Decision on the Concentration,” contained in letter of antimonopoly competition [2010] No. 11. In the letter, MOFCOM declared that the concentration would not eliminate or restrict competition, and could therefore be implemented immediately by the undertakings.

On 4 May 2010, Ping An stated in its “Subsequent Announcements Related to Stock Investment in SDB” that Ping An Life’s planned investment in SDB shares had been officially approved by the pertinent regulatory and competition law enforcement institutions, including CBRC, CIRC, CSRC, and MOFCOM. In addition, on 7 May 2010, Ping An released its “Announcement of the Successful Transference of Newbridge’s Shares in SDB to the Group,” in which it declared that 520,414,439 shares in SDB held by Newbridge had all been transferred to Ping An. Before the transfer was completed, Ping An and Ping An Life held 145,328,248 shares in SDB, representing about 4.7% of SDB’s share capital of 3,105,433,762 shares. After the transfer, Ping An and Ping An Life jointly held 665,742,687 shares in SDB, representing about 21.4% of SDB’s share capital.

Step 2: Shenzhen Development Bank’s Nonpublic Share Offering to Ping An

On 28 June 2010, Ping An announced that SDB had received CSRC’s “Approval of SDB’s Non-public Shares Offering,” which allowed Ping An Life to subscribe to no more than 379,580,000 SDB shares
through a nonpublic issue. On 2 July 2010, Ping An made it clear in its “Announcement of the Completion of SDB’s Non-public Shares Offering to Ping An Life” that when this nonpublic issue was completed, Ping An and Ping An Life would be jointly holding 1,045,322,687 shares in SDB, representing about 29.99% of SDB’s total issued share capital of 3,485,013,762 shares.

**Step 3: Reorganization of Major Assets between Ping An and Shenzhen Development Bank**

On 15 October 2010, Ping An issued a draft statement on “The Purchase of Major Assets and Connected Transactions,” in which it declared that it would manage a full subscription for SDB’s “A” shares, with no other rights attached, through a private share placement at a subscription price of CNY17.75 per share. The consideration would be satisfied by the group’s 90.75% stake, representing 7,825,181,106 shares in Ping An Bank, plus CNY2.69 billion in cash. In addition, the transaction would strictly follow the “Share Purchase Agreement between Ping An and SDB” and its supplemental agreement as signed by the two parties. By the signature date of the statement, Ping An owned, directly or indirectly, a stake of about 29.99% in SDB. When the share acquisition was completed, Ping An, with its 52.4% stake in the bank, would become the controlling shareholder of SDB. According to the provisions of the Measures for Administration of Material Assets Reorganization of Listed Companies, that transaction constituted a material asset reorganization of Ping An may be implemented only after the review and approval by CSRC and other pertinent authorities.

On 28 June 2011, CSRC officially made three decisions regarding the transactions. The first was “Ping An’s Plan for Major Assets Reorganization” (approved by CSRC [2011], No. 1024), in which CSRC gave its approval to Ping An’s application for a major asset reorganization. The second was “SDB’s Asset Purchase through Non-public Shares Offering to Ping An Life” (approved by CSRC [2011], No. 1022), allowing SDB to issue a specified placement of 1,638,336,654 shares to Ping An and to collect CNY2.69 billion from the group. The third was “Statement of Merger between Ping An & SDB and Exemption from the Corresponding Tender Offer Obligation” (approved by CSRC [2011], No. 1023), indicating no objection from CSRC and thereby exempting Ping An from its due tender-offer obligation brought about by the transaction.

On 28 July 2011, Ping An announced its “successful reorganization of major assets” and declared that upon the completion of the transaction, Ping An and Ping An Life would be holding a 52.4% stake in SDB, making Ping An the controlling shareholder of SDB, and Ping An Bank a subsidiary of SDB for the meantime. On 19 January 2012, the board of directors of SDB and of Ping An Bank deliberated on and passed the “Proposal for Planning SDB’s Merger of Ping An Bank,” thus formally agreeing on the merger. Upon the completion of the merger, the legal status of Ping An Bank would be terminated and all of its assets, liabilities, licenses, permissions, business, staff, and other rights and obligations would be legally taken over by SDB as the surviving entity.

On 26 April 2012, CBRC made a reply to “SDB’s Merger with Ping An Bank” (CBRC [2012] No. 192) giving approval to SDB’s merger with Ping An Bank. The approval specified that, after the merger, the legal status of Ping An Bank would be terminated and its branches would be placed under SDB. CBRC directed SDB and Ping An Bank to comply strictly with all the requirements of pertinent laws and regulations, including the Company Law and the Commercial Banks Law, in preparing for and implementing the merger. The asset-restructuring transaction between Ping An and SDB was complete at this point.

Before the transaction, Ping An held a 90.8% stake in Ping An Bank and a 29.99% stake in SDB. During the transaction, SDB would issue to Ping An a total of 1.639 billion shares through specified
placement, and Ping An would pay with its 90.8% stake in Ping An Bank and in cash for its subscription to SDB’s newly issued shares. Ping An would later increase its shareholding in SDB to above 50%. SDB’s total issued capital would increase to about 5.124 billion shares and SDB would hold a 90.8% stake in Ping An Bank and increase its cash position there.

When this transaction was completed, both parties agreed that SDB could take measures including, but not limited to, those allowed by the law such as merging with Ping An Bank at a desirable time, so it could meet the pertinent regulators’ requirement for the “integration of two banks.” Ping An agreed to support and provide the needed assistance to SDB in this integration process.

Discussion of the Case Study

The acquisition of SDB by Ping An of China involved all three industries—insurance, banking, and securities—so the transaction required the approval of the regulatory authorities, particularly CIRC, CBRC, and CSRC. This transaction also met the standard for operators to make a central declaration, and therefore required the submission of the operators’ centralized declaration to the Anti-Monopoly Division of MOFCOM. This submission is mandatory under the competition law; the Provisions on Centralizing Declaration Standards for Operators, issued by the State Council; and the Calculation Methods on Centralizing Declaration Standards for Financial Operators. However, although both parties never made this submission to the Anti-Monopoly Division of MOFCOM, all four regulatory authorities—CIRC, CBRC, CSRC, and MOFCOM itself—had already ratified by as early as May 2010 the application of Ping An Life Insurance, a Ping An subsidiary, to invest in SDB. This was just the first phase of the transaction, but as the public announcements and reports issued by the trading parties showed, the merger parties had already received the necessary approvals for the transaction when they submitted their application to CIRC and CBRC.

According to the laws and regulations, both trading parties should have actively applied for the transaction plan to the supervision authorities, and the authorities should have actively exercised their responsibility of supervising the transaction. What is remarkable is that, for the so-called biggest acquisition in the PRC’s financial history, the operators failed to submit a centralized declaration as required by law. This is an indication that the rules and regulations related to the PRC’s competition law system are unsound, and that there are loopholes in both the rules and in the implementing process for the system. Therefore, on 31 December 2011, the Anti-Monopoly Division of MOFCOM released a temporary measure for investigating and prosecuting operators who fail to make the operators’ centralized declaration. The measure provided specific guidelines for investigating and handling operators that commit this violation.

The following observations need to be made in view of what happened in this big merger case in the PRC’s financial industry. First, since the competition law was first implemented, the regulatory authorities have never seriously considered regulating competition in important domestic industries, including the financial industry. Although the necessary laws and regulations have been passed and are now in effect, awareness of these laws and regulations is extremely low among industry stakeholders and in the business community as a whole. Second, a crucial question that the PRC should seriously consider is how it can efficiently and effectively harness both industry regulation and competition regulation in pursuing the goals of the competition law.
Conclusions

The competition law in the PRC, with its eight chapters and 57 articles, is not concrete and specific enough to be effectively implemented. Its provisions and terms are much too broad compared with those of competition laws in other countries. For this reason, the PRC’s three antimonopoly enforcement authorities have been actively pushing for the passage of supporting laws to strengthen the competition law. They have formulated a set of more specific antimonopoly provisions and regulations based on their respective functions and scope of enforcement.

There are three antimonopoly enforcement authorities in the PRC: MOFCOM, NDRC, and SAIC. MOFCOM is responsible for undertaking an antimonopoly review of concentrations of undertakings to make sure that they are legally aboveboard, and the NDRC is in charge of antimonopoly enforcement work against monopoly agreements and price-related abuse of dominant market positions. SAIC is responsible for antimonopoly enforcement work against monopoly agreements and non-price-related abuse of dominant market position, and also against abuse of administrative power to eliminate or restrict competition. In theory, NDRC and the SAIC have some overlap in their scope of enforcement, but in practice, there have been no serious conflicts between these two antimonopoly enforcement authorities.

The banking industry in the PRC is in transition from an oligopolistic market structure to monopolistic competition. At present, it is monopolized by the commercial banks, with local and foreign banks coexisting and with various types of banks competing with one another. The insurance industry is more monopolized than the banking industry, with the People’s Insurance Company of China (PICC), the People’s Life Insurance Company of China (PLICC), Ping An Insurance of China, and China Pacific Insurance (Group) together accounting for over half of the market. But with the opening up of the market, some small- and medium-sized insurance companies have quickly emerged, gradually loosening the monopolistic hold of the four big insurance companies on the market.

The PRC has three separate antimonopoly watchdogs for the three most important financial industries: CBRC for the banking industry, CIRC for the insurance industry, and CSRC for the securities industry. In practice, the three state agencies perform their respective functions, implement different regulatory measures and policies relative to the characteristics of their industry, and play a crucial role in maintaining the smooth operation of their respective industries.

So far, though, no antimonopoly case has been filed in the PRC’s financial industry. One plausible reason is that antimonopoly enforcement is a relatively new undertaking. Another is that the enforcement bodies do not regard the antimonopoly issues in the financial industry seriously enough.

From the time the competition law was first implemented in the PRC, there have been conflicts between the antimonopoly enforcement authorities and the financial watchdogs concerning scope of enforcement, policy targets, work methods, and work emphasis. To some extent, the case of the acquisition of SDB by Ping An Insurance reflected the nature of these conflicts. Overall, however, the more serious problem in antimonopoly enforcement in the PRC is the evidently weak coordination between the antimonopoly enforcement authorities and the industry regulators.
This study revealed a strong need to heighten the exercise of the law to bring about a well-functioning market mechanism for the financial industry. First, giant state-owned enterprises should be prevailed upon to have a much better appreciation of the competition law and its goals, and the leaders of these enterprises should be made to understand and grasp clearly the essence of the law. The industry regulators, for their part, should fully understand and recognize the fact that the competition law in the PRC is applicable to all domestic industries. Second, in antimonopoly enforcement, a much stronger effort should be made to establish a more efficient and more effective negotiation and coordination mechanism between the antimonopoly enforcement authorities and the industry regulators. Finally, the Anti-Monopoly Commission of the State Council needs to fulfill its responsibility as stipulated in the ninth clause of the competition law, which is to perform a much more decisive coordinating role when conflicts arise between the antimonopoly enforcement authorities and the industry regulators.
References


Raising Awareness of Anticompetitive Behavior in the Financial Sector of the People’s Republic of China

The Anti-Monopoly Law, in effect since August 2008, seeks to encourage competition, maintain market order, and facilitates the allocation of resources through open markets in the People’s Republic of China (PRC). Studies on the impact of this law on the PRC’s financial industry have been limited in scope, hence, the research as published was conducted to fill the gap. This study examines the provisions of the law and the legislation process for them, followed by a discussion of the role of the PRC’s anti-monopoly authorities in enforcing the law in the banking, insurance, and securities industries. It looks at monopolistic practices in the financial industry and the mechanisms instituted for supervising and regulating those practices. It then makes conclusions about the current monopoly situation in the PRC’s financial industry and policy recommendations for a more effective and efficient enforcement of the said law.

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