Unleashing the Tiger? – Competition Law in China and Hong Kong

Melbourne Law School

Conference Opening Address

4 October 2008

In today's world John Donne's celebrated observation that "no man is an island" applies to nations as well as people and even to our island nation, Australia.

The interdependency of countries engaging in international trade and commerce is such that their domestic commercial laws can have a significant effect upon their terms of trade with others and the ease with which capital, goods and services and human resources move back and forward across their boundaries.

In Australia administrators, regulators, lawyers and judges have many areas of work which can be described as involving the local application of local laws even though those applications may be influenced by the approaches taken to similar laws in other countries. There are other areas of work however in which we have a real sense of being part of the development of a body of transnational law and practice even though it grows out of the application of our domestic statutes.

One such area is intellectual property law. Although intellectual property rights are protected in Australia by Commonwealth laws many of their provisions reflect their roots in international agreements and conventions. So the terms on which intellectual property rights are protected in Australia may be affected by both the language of international intellectual property conventions to which Australia is a party and the case law and practices of other countries.

Our competition law, the *Trade Practices Act 1974* (Cth), is concerned primarily with competition in markets in Australia. But the state of competition in markets in Australia is rightly seen as affecting the extent to which Australia can engage in a competitive way in international trade and commerce. What is true for Australia in this way is true for other countries. When the People's Republic of China, a major economic power in the world and an important trading partner adopts a new competition law it is a matter of major significance to Australia.

We should not assume, of course, that we are all bound on a voyage of convergence to some state of anti-trust harmony. There are differences in approaches to competition law around the world. Some of those differences were summarised in a book, published a few years ago, about the internationalisation of anti-trust policy[1]. They are reflected in:

1. Lack of consensus with respect to the meaning to be given to terms such as "competition" and "anticompetitive".
2. Ongoing debate about whether competition particularly needs anti-trust law at all and whether it can be protected using other types of law and policy.
3. Differences in the degree of seriousness with which anti-trust laws are enforced.
4. Differences about the proper goals of anti-trust law with possibilities ranging from economic to political goals. Our own debates about the extent to which s 46 should be restricted to the protection of competition or extended to the protection of small business is an example of such differences.
5. Differences about the right institutional approach to the protection of competition – whether it is best done administratively or judicially.
6. Differences in the way that transnational anti-trust issues should be handled. Some countries are located at one end of the spectrum taking a unilateral approach and others adopt a bilateral or regional or even global approach. Some fall somewhere in between.

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[1] Dabbah MM, *The Internationalisation of Antitrust Policy* (2003, Cambridge University Press).

This conference is timely. The new anti-monopoly law of the People's Republic of China came into effect on 1 August 2008. It has been decades in preparation and represents a major development in anti-trust regulation internationally. Significantly there was substantial input into its drafting from international as well as domestic experts. China has not hesitated to draw upon the experiences of other countries in devising its new law.

Developments in China are not the only developments of interest in our region. In May of this year the Secretary for Commerce and Economic Development in Hong Kong released detailed proposals for a competition law for Hong Kong. In that proposal he announced that the government had decided to introduce a cross-sector competition law and to set up an Independent Competition Commission to enforce it. It is intended to introduce a Competition Bill in the 2008-09 legislative session. Work on the design of the Bill has begun.

This conference brings together distinguished and experienced speakers from the People's Republic of China, from the Hong Kong Special Administrative Region, from the Federal Trade Commission in the United States, together with competition law practitioners, including lawyers, economists and regulators from inside and outside Australia. The topic under consideration, Competition Law in China and Hong Kong, is one of great importance to Australia. The organisers of this conference, Gilbert & Tobin and the Melbourne Law School, who are supported by the Australia & New Zealand School of Government and the Asian Competition Forum, are to be congratulated on convening a range of very high quality speakers and participants to consider the ramifications of the new and proposed laws.

I thank you for your invitation to be here today and have pleasure in declaring the conference open.