

**Report on the Regulatory Environment Global Leaders Forum (Online)  
organized by the Swiss Chinese Law Association (SCLA) on 31 July 2020  
13.00-15.30 CEST**

Prepared by Hermann Knott and Martin Winkler, Andersen, Cologne

**1. Agenda**

13.00-13.10 CET Time

Welcome Remarks by Swiss Chinese Law Association (Tianze Zhang)

13.10-13.30 CET Time

WTO Multilateral Trading System and COVID 19 (Xiaobing Tang)

13.30-13.50 CET Time

Trade and foreign investment Post-COVID19 in the USA: Points for Cross-Border Businesses  
(Ricardo Ampudia)

13.50-14.10 CET Time

Developments in African Competition Law and their impact on cross border transactions, and sig-  
natory event of the partnership between SCLA and Lex Africa (Pieter Steyn)

14.10-14.20 CET Time

Break

14.20-14.40 CET Time

The Key Changes in the Draft Amendment to the Anti-Monopoly Law of China  
& the Enforcement Policy under the Pandemic (Liang Ding)

14.40-15.00 CET Time

Enhanced Cooperation Among Companies – New Possibilities Under International  
Competition Law Principles to Foster Economic Growth post-Covid 19? (Patrick L. Krauskopf)

15.00-15.10 CET Time

Cross Border Regulation for Talents - a Case Study between China and United States (Bo Yi)

15.10-15.30 CET Time

Discussion

**2. Speakers**

Xiaobing Tang (China), Senior Counsellor of WTO

Ricardo Ampudia (USA), partner at SHB,

Pieter Steyn (South Africa), Partner at Werksmans and Chairman of Lex Africa

Liang Ding (China), Partner at Deheng Law Firm

Patrick L. Krauskopf (Switzerland), Chairman @ Agon Partners, Professor at Zurich University  
ZHAW

Yi Bo (China), Professor at Southeast University

**3. Welcome Remarks from Swiss Chinese Law Association**

Mr. Tianze Zhang first welcomed the speakers and participants. He then introduced the subject of  
the 7<sup>th</sup> SCLA Global Online Forum: In relation to the regulatory landscape we are facing uncertain

times because of the Covid 19 crisis. The question arises whether there will be a brighter future ahead for us.

Mr. Tianze Zhang also encouraged discussion during the Forum and afterwards. He invited the participants to comment on the Report of the Forum which will be published.

He then gave a brief introduction of the SCLA.

Its vision is to be a forum and supporter of furthering the mutual understanding and exchange between European and Asian countries. The two countries referred to in its name are a reference to the respective regions, thus not excluding, but inviting for lawyers, law firms, business enterprises and other organizations to join as members.

In line with its vision the SCLA promotes exchange between its members and with International organizations. SCLA is applying for an observer status with UNCTAD. It is organizing online fora and – when possible again – in-person conferences to allow the direct exchange of views, establishing personal contacts and share knowledge.

The SCLA also promotes the exchange in legal matters between China, Switzerland and European Countries. It coordinates the publication of the Swiss Chinese Law Review which will be published in its second edition in August 2020. To put it in a nutshell: SCLA membership provides excellent networking and business opportunities plus the chance to widen substantive knowledge and design new legal products.

#### **4. WTO Multilateral Trading System and COVID 19**

##### **4.1. The principles of WTO multilateral trading**

Mr. Xiaobing Tang started his presentation by explaining that the international trading system is based on the WTO. The principles of the WTO multilateral trading system are: Non-discrimination, Transparency, Reciprocity, Prohibition of unnecessarily trade restrictive measures, Preservation of policy space for addressing important social concerns in a crisis.

##### **4.2. The impact of Covid 19 on world trade in general**

Covid 19 has affected almost all countries and customs territories in the world. COVID 19 has already delivered an unprecedented shock to the global economy and caused significant social disruption. In April 2020, WTO forecasted, under an optimistic scenario, the volume of world merchandise trade would fall by 12.9% (and world GDP would drop by 2.5%); and under a pessimistic scenario, trade would fall by 31.9% (and world GDP would drop by 8.8 %).

##### **4.3. The WTO and trade in medical products**

COVID 19 brought considerable attention to trade in medical products, and specifically trade in products for prevention, testing and treatment. Germany, US and Switzerland supply 35% of medical products; China, Germany and US export 40% of personal protective products. Trade of products described as critical and in severe shortage in COVID 19 crisis totaled about \$597 billion.

Tariffs on some products remain very high. For example, the average applied tariff for hand soap is 17% and some WTO Members apply tariffs as high as 65%.

In 2019, the total imports of medical products accounted for \$1.01 trillion with the US, Germany and China being the top three importers insofar. Most of trade insofar is in Europe and in the US.

From the export side, Germany, the US and Switzerland are the top three exporters of medical products in 2019. In relation to personal protective products China, Germany and the US are the top three exporters. China supplied 25% of face masks in 2019. Singapore, US, Netherlands, and China export more than half the world's respirators and ventilators.

The WTO has contributed to the liberalization of trade medical products in three main ways:

1. The results of tariff negotiations scheduled at the inception of the WTO in 1995;
2. The plurilateral sectoral Agreements on Pharmaceutical Products (or "Pharma Agreement" and its subsequent reviews);
3. The 2015 Information Technology Expansion Agreement.

The average tariff applied by WTO-Members on all products is 4.8%, on medicines 2.1%, on medical supplies 6.2%, on medical equipment 3.4% and on personal protective products 11.5%. Respirators or ventilators were in shortage in the current health crisis. The world average tariff on this product is 3.3%, but some Members apply higher rates. Sixty-seven Members provide duty-free treatment to respirators or ventilators, including the EU, US, Republic of Korea, and Switzerland.

#### COMMENT FROM THE REPORTER

The barriers to trade regarding these vital products with high importance during the current pandemic are very low. This is testimony to the fact that there is little need to regulate the trade in these goods by any direct or indirect barriers.

END OF COMMENT

#### **4.4. Presentation of a recent WTO report**

Mr. Xiaobing Tang then went on by presenting a recent WTO report:

In relation to non-tariff measures, according to a recent WTO report, overall, WTO Members implemented 363 new trade and trade-related measures during the review period (of Mid-October 2019 to Mid-May 2020), of which 198 were of a trade-facilitating nature and 165 were trade-restrictive. 70% of these measures (256 in total) were linked to the COVID-19 pandemic and of which 147 facilitated trade and 109 restricted trade. At mid-May 2020, 57% of all COVID-19-related measures implemented by WTO Members were trade-facilitating; around 28% of the COVID-19-specific trade restrictions. The trade coverage of these non-COVID-19-related import-facilitating measures implemented during the review period was estimated at USD 739.4 billion; and the trade coverage for these new import-restrictive measures was estimated at USD 423.1 billion. It is estimated that 8.7%

of world imports (USD 1.7 trillion) is affected by import-restrictive measures implemented since 2009 and still in force. During the review period, 239 trade remedy actions were recorded for WTO Members with initiations of anti-dumping investigations accounting for around 80% of all trade remedy initiations.

For trade in services, most of the new measures introduced by WTO Members during the review period were trade-facilitating. There were 99 services measures related to Covid-19 adopted by WTO Members in response to the pandemic appeared to be trade-facilitating such as the subsidies for Lufthansa by the German State. But a number of new policies adopted during the review period appeared to be trade-restrictive.

Technical standards regulating safety, quality and other characteristics of products often affect international trade. WTO Agreement on Technical Barriers to Trade (TBT) is aimed at disciplining these measures. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) is aimed at:

1. improving the human health, animal health and phytosanitary situation in all WTO Members;
2. establishing a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of SPS measures in order to minimize their negative effect on trade; and
3. harmonizing SPS measures between Members.

In the areas of SPS and TBT, during the review period, and WTO Members notified a higher volume of SPS and TBT measures compared to the previous period. Most of new notifications were submitted from 1 February to 15 May 2020. Amongst them, 19 Members notified 29 SPS measures taken in response to Covid-19. As of 15 May 2020, 14 WTO Members had submitted 53 TBT notifications/communications on standards and regulations in response to COVID-19, covering a wide range of products including personal protective equipment, medical equipment, medical supplies, medicines and food.

WTO Members continued to make extensive use of the review process in the area of Agriculture. In relation to COVID-19, several WTO Members informed the WTO about their temporary measures to respond to food security threats. Several WTO Members implemented specific IP-related measures aimed at facilitating the development and dissemination of COVID-19-related health technologies, as well as at relaxing procedural requirements and extending deadlines for administrative IP matters.

#### **4.5. Conclusion**

Keeping markets broadly open to trade would help build a strong, sustainable and inclusive post-COVID economic recovery. Members' policy choices, including at the WTO, would play an important role in laying the groundwork for a return to growth and job creation.

The pandemic's growing economic and social impact will shape the environment for the WTO's work for the foreseeable future. International cooperation on trade will be critical to help all countries build back better.

## COMMENT FROM THE REPORTER

The statistics shown in Mr. Xiaobing Tang's presentation were very encouraging, especially the high number of initiatives easing trade restrictions at a time when reports about measures restricting trade are abundant.

Thus, there appears to be a need to present the WTO's work in more directly to the public. Especially benefits to the US should become more visible to enhance support as a body whose role is valuable despite (or because of) the ongoing trade war.

END OF COMMENT

### **4.6. Discussion**

Mr. Hermann Knott asked what are the powers of the WTO to realize its recommendations? Does the WTO have the power to realize them by itself or does implementation occur at the Member States' level? Mr. Xiaobing Tang answered that the WTO is an intergovernmental institution which is why it is typically the responsibility of the WTO-members to realize the WTO-recommendations. Therefore, the power of the WTO is jointly in the hands of the WTO-members. The WTO can presently be considered as standing at a critical moment in terms of uncertain developments which affect the functioning of the WTO-Appellate body.

### **5. Trade and foreign investment Post-COVID19 in the USA: Points for Cross-Border Businesses**

#### **5.1. General remarks**

Mr. Ricardo Ampudia first explained that his presentation is about what businesses with cross-border operations should keep in mind when doing international trade and investment in the USA during COVID 19. In response to the Covid 19 pandemic countries including the USA have imposed temporary restrictions on exports of certain medical goods and food. In the U.S., these measures range from explicit export bans to licensing requirements to mandates to sell. These measures have raised the issue of consistency with the WTO-rules. A concern cause specifically by the Covid 19 pandemic is the market interdependence across international boundaries

#### **5.2. Restrictions on exports applied in the USA**

These measures mainly relate to personal protective equipment and military equipment and they have an increased focus on China, Russia, and Venezuela.

On April 7<sup>th</sup>, 2020, the US Federal Emergency Management Agency (FEMA) implemented certain provisions of the Defense Production Act (DPA) and issued a rule banning the export of certain personal protective equipment without the explicit approval from FEMA. The rules include certain exemptions for exports to Canada or Mexico.

On April 27<sup>th</sup>, 2020, the US Department of Commerce established an institution which is called the Industry and Security Bureau (BIS). In context therewith new export control measures were implemented to enforce further restrictions on exports and technology transfers to China, Russia and Venezuela. These measures include the expansion of military end use and end user control (MEU), the removal of license exceptions for civil end users and they include the general elimination of the exception to the licensing requirements for civil users. The changes will expand licensing requirements for exports, re-exports and transfers of certain goods, materials and software to Chinese military end users. These new rules will essentially act as an export ban.

### **5.3. Restrictions on imports applied in the USA**

During the pandemic, the US has introduced or is considering introducing new tariffs and exclusions from such tariffs for certain goods (e.g. Gin and Vodka, olives, chocolate, and machinery) and coming from certain countries of origin (e.g. EU). The countries mostly affected by these restrictions would be France, Germany, Spain and the UK. In addition, the US Trade Representative is considering raising tariffs as much as 100 % on whisky and other goods. The trade dispute with the EU was initially over aircraft subsidies and stretches back to 2004.

In relation to the exclusion from such tariffs, the US recently announced that there will be a new round of tariff breaks for Chinese imports to combat the Coronavirus. In the past the US has imposed tariffs as high as 25 % on some Chinese imports. However, tariffs exclusions and breaks are available for goods that are not sufficiently available from US suppliers (e.g. certain medical equipment).

### **5.4. Sanctions and controls in the US**

During the Covid 19 pandemic, the Office of Foreign Asset Control (OFAC) has strengthened existing sanctions programs with respect to Iran, Syria, and Venezuela. With respect to China there is also the prospect of new sanctions. To avoid regulatory and sometimes criminal penalties it is important for companies to keep these sanctions programs in mind. On May 27<sup>th</sup>, 2020, the US announced that it would end sanctions waivers covering activities originating with the nuclear projects in Iran. OFAC authorized a sixty-day period until July 27<sup>th</sup>, 2020 for Non-US parties engaged in covered activities to pull out of nuclear-related activities in Iran or face potential sanctions. On 17<sup>th</sup> June, 2020, OFAC and the US Department of State began to implement the Caesar Act which includes sanctions on over thirty Syrian and Syria-related entities and individuals including the President Assad and his wife. In early 2020, OFAC imposed sanctions on nine Non-Venezuelan parties for dealing with prohibited sectors of the Venezuelan economy. These actions have included Russian oil firms and maritime companies because of their connection with the Venezuelan oil production.

In the US foreign investment in strategic sectors such as sophisticated technology and defense is subject to governmental review for potential implications to national security. The agency which conducts this review is called Committee on Foreign Investment (CFIUS). Although CFIUS rarely suspends or blocks foreign investment it is able to require foreign investors to agree to various measures to alleviate national security concerns. These can include tracking and notification obligations and the establishment of international compliance monitoring mechanisms. Reportedly, CFIUS has been scrutinizing investment from China with greater rigor especially in the technology

sector. CFIUS is exercising increased control on investments in US companies whose value has been significantly depressed because of the pandemic.

### **5.5. Practical suggestions**

Mr. Ampudia finished his presentation by giving some compliance suggestions for cross border companies based in the U.S.: It is important to know the export classifications applying to a company's products. It is also imperative to conduct a Due Diligence on end users and end-use purposes of the products that a company is exporting. It is important to monitor tariff waivers and exclusions. As NAFTA has recently been replaced by the US Mexico Canada Agreement (USMCA) as its successor, there might be new individual trade regulations promulgated under USMCA. Finally, business entrepreneurs should not ignore benefits that could result from investment treaty protection.

### **5.6. Discussion**

Mr. Knott made the remark that Kodac, the traditional photographic film company, has become a big pharmaceutical manufacturer and asked how Mr. Ampudia would consider this development. He answered that the situation is fluent, and a lot of companies have been entering new markets because of the requirements imposed by the US-administration. Mr. Knott also suggested to comment on the US as traditionally being a promoter of free trade, while at the same time having a high degree of trade regulations. Mr. Ampudia answered that there are many influential actors that are pushing for liberalization in the US, but that there is also a backlash against liberalization which is largely motivated by politics especially in regions that have experienced substantial structural changes..

Mr. Xiaobing Tang asked Mr. Ampudia about the reactions of the key stakeholders to these new US-policy initiatives. Mr. Ampudia answered that the reactions generally have been one of concern because these new measures could be disruptive to present and future supply chains and therefore the ability of the US economy to react to the pandemic. The US Chamber of Commerce created specific task forces to make sure that during the pandemic cooperation rather than limitation is encouraged.

## **6. Developments in African Competition Law and their impact on cross border transactions, and signatory event of the partnership between SCLA and Lex Africa**

### **6.1. Introduction**

Mr. Pieter Steyn started his presentation by explaining that Africa is not a country! It is rather composed of 54 countries with 1.2 billion people. Therefore, it is not a unified block. Africa has a huge diversity with more than 2000 languages and is the "last frontier" of competition law. South Africa has a modern competition law since 1999. Since then competition law is developing rapidly throughout the continent. In case of contravention to competition law there is a risk of serious consequences, e.g. severe financial penalties for the firm, potential damages claims, reputational damage and even criminal sanctions for directors and managers involved (e.g. 10 years jail and/or R500 000 (about USD 30,000) fine in South Africa). Therefore, competition law has important implications for transactions and conduct of business.

In Africa, there are over 25 national competition law regimes. And there are regional competition regimes like COMESA which covers 21 countries – North, East, Central and Southern Africa; the East African Community (Kenya, Tanzania, Uganda, Rwanda, Burundi, South Sudan) has their own regulator; in west Africa blocks are ECOWAS and WAEMU (15 and 8 countries, respectively) and in central Africa CEMAC (6 countries).

## **6.2. Recent Developments – Nigeria**

In Nigeria, a new competition law was signed into law in February 2019. It establishes a Competition Commission and Tribunal and prohibits cartels, abuse of market dominance and minimum resale price maintenance. It also introduces a new merger control regime. Furthermore, it criminalises cartels and failure to cease an abusive practice. It also provides for a general penalty for body corporates of up to 10% of annual turnover. Directors may face up to 5 years jail and/or a 50 million Naira fine (about USD 129,000). 0.5% of after-tax profits are payable by all Nigerian companies as fees to the Competition Commission. The Nigerian competition law allows the President to regulate the prices of certain goods and services and it also covers consumer protection.

## **6.3. Recent Developments – South Africa**

In relation to merger control in South Africa there is a new national security test for foreign buyers and new public interest grounds (effect on ownership by Historically Disadvantaged Person (HDPs) and workers and on ability of SMEs and HDP firms to enter and participate in market). In relation to the prohibition of excessive pricing by market dominating companies the burden of proof is on the dominant firm to show that its pricing is reasonable. The same applies as far as the prohibition of abuse of purchasing power by dominant companies with regard to imposing unfair pricing and trade terms on SMEs and on HDP firms is concerned. Price discrimination by dominant companies is prohibited if it impedes SMEs and HDP companies, even if it has no anti-competitive effect.

## **6.4. Recent Developments – Other countries**

A New Angolan law introduced a mandatory merger control regime. Under a new law in Botswana Cartels are criminalized and there is a penalty for gun jumping (10% of price or combined turnover). Under amendments under the laws of Kenya the abuse of purchasing power is prohibited, merger thresholds and forms were revised, and a Filing is not required if a filing with COMESA is required.

## **6.5. General trends in competition law in Africa**

Generally, there is a shift in focus away from merger control towards enforcement and conduct cases (cartels, abuse of dominance and restrictive practices). Leniency/amnesty programs have been introduced in several countries, e.g. South Africa, Namibia, Zambia and Mauritius. The COMESA competition commission particularly focuses on reviewing distribution agreements, e.g. non-compete clauses and restrictions on passive sales and resale prices. There is also an increased number of dawn raids by competition regulators, e.g. in South Africa, Kenya, Namibia, Botswana, Malawi and Zambia. Cooperation between regulators to enforce competition laws in other countries is growing. Furthermore, new competition laws are being submitted/prepared eg Ghana, Uganda, South Sudan or are being reviewed and amended eg Zimbabwe, Tanzania and Mauritius.



## **6.6. Covid-19 pandemic**

On 29 July 2020 there were a total of 874,035 infections, 18,497 deaths and 524,556 recoveries in Africa, with South Africa being the most affected country with 459,761 cases and 7,257 deaths.

In reaction to the Covid 19 pandemic, the competition authorities have arranged for virtual hearings. In some countries, merger filings have been suspended. For COMESA there exists an obligation to file a merger within 30 days, during the pandemic, however, there is no penalty on late filings.

In relation to actions by regulators, COMESA issued a warning on phony covid-19 remedies. In Kenya, in an excessive pricing case, a retailer of hand sanitizers was ordered to refund customers, and the Kenyan authorities also required the removal of exclusivity provisions in distribution agreements for maize/wheat flour, edible oils, rice, sanitizers and toilet paper. In Malawi 11 pharmacies have been investigated for excessive pricing of masks, gloves and sanitizers. In Zambia, Mauritius, Nigeria the authorities issued a cautionary note on excessive pricing of hygiene and other products. In South Africa, the competition authorities have recorded over 600 complaints on excessive pricing. To prosecute these cases, they took a wide perspective defining market power. They also accept exemptions for the exchange of certain information and agreements with restrictive effects in the banking, healthcare, hotel and retail property sectors, e.g. regarding allocating patients between hospitals, but they excluded price agreements/communication from such exemptions.

## **6.7. Conclusion**

For buyers in transactions, competition law due diligence is important. For transaction timetables, it is important to identify applicable merger control regimes. Since "prevention is better than cure", business enterprises with activities on the African continent are nowadays advised to consider engaging in competition law training for their employees and external sales force.

## **6.8. Signatory event of the partnership between SCLA and Lex Africa**

Then, Mr. Tianze Zhang announced the partnership between SCLA and Lex Africa. The aim of this cooperation is to promote exchange and better understanding between the legal communities.

Then, Mr. Pieter Steyn introduced Lex Africa. It was founded in 1993 and it is an alliance of African law firms and African lawyers. It comprises over 600 lawyers in over 20 member countries. The focus of Lex Africa is to promote African lawyers in the world and offer integrated services across important jurisdictions in Africa.

Then, Mr. Tianze Zhang as representative of SCLA and Mr. Pieter Steyn as Chairman of Lex Africa signed the Memorandum of Understanding on the cooperation between SCLA and Lex Africa and both exchanged toasts.

## **7. The Key Changes in the Draft Amendment to the Anti-Monopoly Law of China and the Enforcement Policy under the Pandemic**

### **7.1. Overview**

The Chinese Anti-monopoly Law (the "AML") became effective on August 1, 2008. It has provisions which are similar to competition laws of other countries (prohibition of cartel, abuse of dominant market position and merger control), but it also contains provisions on the abuse of administrative power. The State Administration for Market Regulation ("SAMR") has launched a public consultation on Draft of Amendments to the Anti-monopoly Law ("Draft AML") in January 2020. The reasons for this planned Amendments are: The sanctions are not severe enough, e.g. sanctions for failures to notify SAMR for transactions that meet the notification thresholds for merger control review; the Law is not flexible enough for the SAMR to be able to efficiently enforce it, there are also some policy changes that will be introduced.

## **7.2. Key Changes of the AML**

### **7.2.1. Sanctions**

In relation to Merger Control violations (including failure to file, gun-jumping and breach of conditions in SAMR's merger approvals) currently the maximum fine is RMB 500,000 (approx. USD 70,400). Under the Draft AML Fines fines will be up to 10% of the company's revenues in the previously completed business year. Currently, companies who organize or facilitate others to reach monopoly agreements do not face any sanctions. Under the Draft AML Fines fines will be up to 10% of the company's revenues in the previously completed business year. Currently, trade associations who organize or facilitate others to reach monopoly agreements face a maximum fine of RMB 500,000 (approx. USD 70,400). Under the Draft AML Fines the fine will be up to RMB 5 million (approx. USD 704,000). For Monopoly agreements that have been concluded, but yet need to be implemented, the fine will be increased from the current maximum fee of RMB 500,000 (approx. USD 70,400) to a maximum fine of RMB 50 million (approx. USD 7.04 million). Furthermore, companies who obstruct or interfere with antitrust investigations currently face a maximum fee of RMB 1 million (approx. USD 141,000). Under the Draft AML Fines the fine will be up to 1% of the company's revenues in the last year, and for those with no revenues or hard-to-calculate revenues, up to RMB 5 million (approx. USD 704,000).

### **7.2.2. Merger control: Introducing a "Stop the Clock" Mechanism**

Under the current AML the review stages of merger control take a maximum of 180 days. There is no flexibility for the AML insofar. For complicated merger cases the Draft AML grants SAMR the power to stop the clock on merger control reviews:

### **7.2.3. Modification of the Merger Control Thresholds**

The Draft AML entitles SAMR to stipulate and modify the thresholds of merger control, instead of the State Council. SAMR can stipulate and modify the thresholds based on the economic development level and scale of industry. This give SAMR the flexibility to address issues related to the emerging industries.

### **7.2.4. Fair Competition Review System**

In order to regulate the local government's administrative behavior and to prevent policy measures that exclude or restrict competition, the local government when issuing a policy must be in compliance with the fair competition review system.

#### **7.2.5. Internet sector dominance**

To determine whether an undertaking has dominant position in the internet sector the authorities should consider the factors such as network effect, economy of scale, lock-in effect, and the ability to obtain and dispose of data.

### **7.3. AML Enforcement Policy under the Pandemic**

On 5 April 2020, the SAMR issued the Announcement on Anti-monopoly Enforcement to Support Combating Pandemic and Restarting Economy (the "Announcement"). The Announcement is aimed at facilitating efforts to combat the COVID-19 pandemic and restart China's economy; the Announcement also identifies certain industries that may face antitrust scrutiny under the pandemic.

#### **7.3.1. Facilitating efforts**

##### **7.3.1.1. Exemptions**

The following agreements among competitors to combat the COVID-19 pandemic and restart China's economy will be **exempted** from liability under the AML:

- improving technologies, efficiency, public interest and consumer protection, e.g. joint R&D agreements in the fields of medicines, vaccines, testing technology, medical equipment, protective equipment, etc.
- unifying specifications and standards, or implementing a division of labor based on specialization to improve the product quality, reduce costs, and increase efficiency;
- realizing public interests by rescue and relief efforts;
- improving the operation efficiency and competitiveness of small- and medium-sized undertakings.

##### **7.3.1.2. Acceleration of the merger control review process**

In order to save transaction time and reduce transaction costs, SAMR has established a green review channel (i.e. clearance can be obtained within 12 days) for the transactions which involve:

- the fields closely related to combat the pandemic, e.g. medicine manufacturing, medical instrument/equipment manufacturing
- the fields closely related to people's health, e.g. food manufacturing, transportation, wholesale and retail
- the industries that have been severely affected by the pandemic, e.g. catering, accommodation, tourism.

#### **7.3.2. Tightened antitrust scrutiny**

To create a fair competitive market environment to combat the pandemic and restart the economy, and effectively protect consumer interests, SAMR tightened its antitrust enforcement in the following fields:

- **businesses manufacturing and distributing masks, medicines and medical equipment;**
- **public utilities**, e.g. water supply, power supply, gas supply;
- **the fields closely related to people's health and living conditions (wholesale, retail)**

#### **7.4. Discussion**

Mr. Tianze Zhang asked Mr. Liang Ding what kind of companies will benefit from the Draft Amendments. Mr. Liang Ding explained that in relation to merger control the “stop the clock”-mechanism will mostly benefit international investors because they will gain time to show that the merger has no anti-competitive effect.

### **8. Enhanced Cooperation Among Companies – New Possibilities Under International Competition Law Principles to Foster Economic Growth post-Covid 19?**

Mr. Patrick L. Krauskopf gave a presentation from the Swiss and European perspective on the experiences over the last 4 to 6 months on how companies and competition authorities reacted to the Covid 19 crisis. However, he highlighted from the beginning that no cases have yet been decided.

#### **8.1. Status Quo**

In relation to the Status Quo he explained the major impact of Covid-19 on the markets: Suppliers used the Covid 19 crisis to change the distribution network, i.e. resellers are replaced by online distribution networks. There is a risk of abuse. As regards the reactions of the governments we have seen a lot of subsidies in Europe, sector regulations and financing programs.

#### **8.2. Cooperation**

Faced with the Covid 19 crisis a lot of companies have engaged in cooperation in the field of Logistics, R&D, Supply Chain etc. From the perspective of the competition authorities it is necessary to balance the pro-competitive effects of cooperation against its anti-competitive impact. Such pro-competitive aspects may take the form of a reduction of transaction costs or a realization of large-scale projects. The possible anti-competitive effects of cooperation are: Less innovation, less efficient use and allocation of resources, higher prices, lower price stability, persistence of inefficient companies, creation of market power. As regards the last point, a personal concern is that typically in the IT-sector in Switzerland you have online-distribution networks with strong suppliers getting even stronger in the market. This enhancing of market power raises concerns from the perspective of SMEs and customers.

In relation to the forms of cooperation the typical forms are binding and non-binding agreements, mergers and acquisitions and joint ventures. For example, in Switzerland in the health industry there were some SMEs the trade association of which looked for a single point of contact with all customers at the end of March 2020. The customers are basically publicly owned hospitals and R&D-Institutions. Overnight, the increase in price was about 25 %. The Swiss competition authority reacted instantly. It handled the case as a cartel and did not accept any efficiency gains.

### **8.3. Relevance of Competition Law**

The above-mentioned balancing act between pro-competitive and anti-competitive effects of a co-operation takes into account efficiency gains. However, in the EU and Switzerland these must be of economic nature. In this crisis the question arises how to assess efficiency gains in terms of supply of drugs. Some agencies declared to be open to this new approach of assessing efficiency gains. However, by law e.g. in Austria it is very difficult to take into account aspects that are not economically measurable. Therefore, in Austria a revision of the competition law is currently in progress.

### **9. Cross Border Regulation for Talents - a Case Study between China and the United States**

Mr. Bo Yi started his presentation by explaining that in recent years, research and development of scientific and technological products between Chinese Universities and foreign enterprises and scientific research institutions have become more and more frequent. However, in the transnational technology transfer and the employment of technical personnel, especially between the United States and China, the legal risks are also repeatedly revealed. The significant increase in the number of charges against American or Chinese scientists by the Department of Justice in recent years is a manifestation of this. The DOJ has a very high success rate in such criminal cases, and most of the accused individuals have been given harsher penalties.

In 2018, the DOJ started its China Initiative. In 2018, there were 7 indictments. In 2019, there were 23 indictments. In 2020 until 31<sup>st</sup> July, there were 23 indictments and the total number of cases is 50. The allegedly colluding Chinese institution/University are:

- Fuzhou University
- National University of Defense Technology
- Wuhan University of Technology
- Beijing University of Technology
- Xidian University
- Huazhong University of Science and Technology

Chinese Universities should always pay attention to the legal risks that may be triggered when attracting talents from overseas, especially from the United States. The risk assessment procedures for all projects of "overseas high-level talents" shall be increased by Chinese Universities. The applicants' intellectual property rights, confidentiality agreements and prohibition of business competition shall be comprehensively evaluated and examined to guard against the legal risks of introducing talents and ensure the safety of talents.

Chinese Universities should do the following:

Especially for talents from the United States

- Third-party forensic analysis of all electronic devices (Including home computers)
- Run search terms and scrub all suspect data

### **10. Closing remarks**

Finally, Mr. Tianze Zhang invited Mr. Hermann Knott to make his closing remarks: Mr. Knott thanked the panelists and the audience for this great Forum which covered different regions and different

approaches. He congratulated Mr. Pieter Steyn and Mr. Tianze Zhang for the signature of the partnership between the SCLA and Lex Africa. Mr. Knott then gave the last word to Mr. Zhang who also thanked the speakers for their contributions and Mr. Knott for his work.