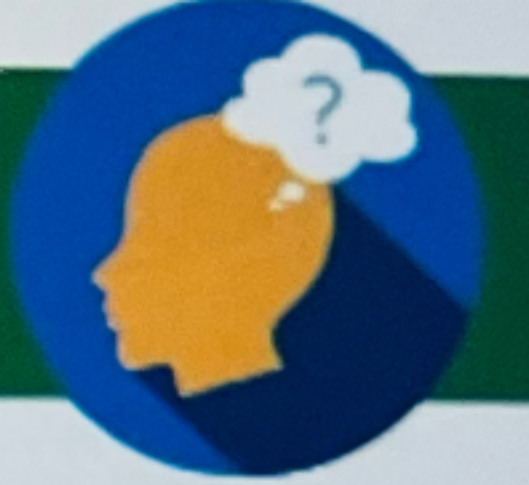




Antitrust Wars

In the arsenal of global competitive dynamics, trade wars—in the form of tariff and nontariff barriers—are an age-old weapon (see Chapter 5). In the 21st century, a new style of trade wars centered on protectionism is on the rise. These are increasingly known as antitrust wars because antitrust policy, which historically focuses on domestic competition, can be used to score international points.

In 2001, the EU antitrust authorities—the European Commission—torpedoed the proposed merger of two US firms, GE and Honeywell, which obtained US antitrust clearance. In 2009, the EU fined Intel a record \$1.45 billion for anticompetitive conduct against its smaller US rival, AMD. In 2009, the EU prosecuted Microsoft for tying Windows with its own browser,

previous year, must be cleared by Chinese authorities. For example, the 2008 merger between Belgium-based InBev and US-based Anheuser-Busch was approved by Chinese authorities, subject to some conditions. Sometimes Chinese antitrust regulators imposed higher procompetition standards than their US and EU colleagues. In 2014, when three of the largest shipping lines—Maersk of Denmark, CMA CGM of France, and Mediterranean Shipping Company of Switzerland—proposed to have an alliance called the P3 Alliance, neither US nor EU antitrust authorities would object. But the Chinese vetoed the deal, citing an unhealthy concentration of one-half of all container traffic between Asia and Europe in the hands of P3.

The list of prosecuted foreign firms in China reads

er US rival, AMD. In 2009, the EU prosecuted Microsoft for tying Windows with its own browser, Internet Explorer, and stifling competition from other browsers—exactly the same alleged crime pursued by US authorities a decade earlier. The EU case was triggered by a complaint from Opera Software, an Oslo, Norway-based browser maker. In comparison with Explorer's 86% global browser market share in 1999, in 2009 Microsoft's dominance was weakened. In 2009, Explorer only had 68% of the global market, and its nearest competitor, Firefox (developed by US-based Mozilla), enjoyed 20%. In Europe, Microsoft was even weaker, with Explorer accounting for only 60% of the market, followed by Opera's 5% and Firefox's 3%. Nevertheless, the EU slapped a \$732 million fine on Microsoft in 2013. Between 2017 and 2019, the EU fined Google a record \$9 billion in *three* cases (see In Focus 11.3). In 2020, the French Competition Authority imposed France's largest antitrust fine on Apple on an alleged distribution cartel. Overall, the EU antitrust authorities appear to vigorously pursue leading US technology firms, suggesting a potential protectionist

traffic between Asia and Europe in the hands

The list of prosecuted foreign firms in China reads like an impressive set of global heavy weights in such industries as cars (Fiat Chrysler and Volkswagen), infant formula (Abbott Laboratories, Danone, and Mead Johnson), semiconductors (Qualcomm), and software (Microsoft). China's new antitrust activism has attracted a great deal of controversies. Perhaps the Chinese government is targeting foreign firms. Chinese regulators have denied such discriminatory targeting. They suggest that many domestic cases have been settled quietly. But the media has a tendency to feast on foreign firms being prosecuted. Using the highest-profile counterexample, Chinese regulators point out that they stopped Alibaba subsidiary Ant's listing in 2020 and hit Alibaba with a \$2.8 billion fine for anticompetitive conduct in 2021.

Or perhaps the Chinese are targeting *certain* foreign firms. In one 2014 case, eight Japanese auto parts makers (Aisan, Denso, Furukawa, JTEK, Mitsubishi Electric, NSK, NTN, and Sumitomo Electric)—because of their price fixing—were hit with a record \$200 mil-

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Not to be outdone, the fledgling Chinese antitrust authorities entered the foray by enforcing China's Anti-Monopoly Law, which took effect in 2008. Mergers of firms not headquartered in China, as long as their combined China turnover reached \$120 million in the

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Or perhaps the Chinese are targeting *certain* foreign firms. In one 2014 case, eight Japanese auto parts makers (Aisan, Denso, Furukawa, JTEK, Mitsubishi Electric, NSK, NTN, and Sumitomo Electric)—because of their price fixing—were hit with a record \$200 million combined fine. This took place during a time when diplomatic tension between China and Japan was high. Again, denying such motives, Chinese trustbusters pointed out that some of the same Japanese firms were recently found guilty by their trustbusting colleagues in the US, the EU, and Japan itself. In 2018, in

possible retaliation against the Trump administration's anti-China trade wars, Chinese antitrust authorities blocked the merger between Qualcomm of the United States and NXP of the Netherlands.

Likewise, in India, the government has used anti-trust laws to discriminate against foreign entrants. In 2019, Amazon—despite its \$4 billion investment in India—had a rude awakening. The government banned Amazon's exclusive arrangements, deep discounts, and joint ventures with sellers. Tellingly, such antitrust crackdown *only* involved foreign-owned firms, which now included Flipkart because it was no longer Indian-owned—Walmart had acquired it. But not all Indian-owned e-commerce firms, despite some of their huge size, were affected. While India welcomes foreign firms, according to the government, they “cannot be allowed to indulge in anticompetitive practices” crushing the mom-and-pop shops.

Around the world, antitrust wars have now become a part of institution-based competitive dynamics lever-

and the EU) do they have to consult with the anti-trust authorities in order to obtain their clearance?

2. *ON ETHICS*: As CEO of a US firm, your \$1 billion acquisition of a Chinese firm is blocked by the Chinese antitrust authorities. In discussions, Chinese officials hint that if TikTok's recent \$1 billion acquisition of a US firm, which was blocked by the Committee on Foreign Investment in the United States (CFIUS), could be favorably reevaluated, they may reconsider your case. You and the Secretary of the Treasury, who chairs CFIUS, are good friends who went to school together. Next time when you see her at a private function (her son's wedding), what are you going to say to her?
3. *ON ETHICS*: Holding everything else constant, would your firm that you lead as CEO like to invest in any of the countries and regions mentioned in the case, which have active enforcement of anti-trust laws, or in some other countries that have no antitrust authority (or even have no antitrust

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Around the world, antitrust wars have now become a part of institution-based competitive dynamics leveraging favorable rules of the game to scuttle certain foreign firms’ endeavors. Whether undertaking a domestic merger or engaging in foreign direct investment (FDI), current and would-be managers need to arm themselves with the necessary antitrust knowledge and steel stomach as part of their repertoire.

Case Discussion Questions:

1. Two large Italian firms agree to merge. Between them, they have operations in 150 countries (including all the countries named in the case). In how many countries and regions (other than Italy

time when you see her at a private son’s wedding), what are you going to say to her?

3. *ON ETHICS*: Holding everything else constant, would your firm that you lead as CEO like to invest in any of the countries and regions mentioned in the case, which have active enforcement of anti-trust laws, or in some other countries that have no antitrust scrutiny (or even have no antitrust laws) for inward FDI?

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