

Competition and Antitrust

The Preeminent China-based International Law Firm

Founded in 1993 and one of the most prestigious law firms in the region, Fangda Partners has over 700 lawyers. We serve a wide variety of major clients – including large MNCs, global financial institutions, leading Chinese enterprises and fast-growing Hi-tech companies – on an extensive range of commercial matters through our network offices in Beijing, Guangzhou, Hong Kong, Shanghai and Shenzhen, offering PRC law and Hong Kong law.

We are the firm of choice for clients' most challenging transactions and legal issues in many practice areas. Since we were founded, we have advised on some of the largest and most complex corporate and finance transactions in China, the region and globally. We have also assisted our clients with many renowned and complex cases and arbitrations, and compliance and government investigations in the region.

Our service to clients is premised on the dual foundations of strong local law capabilities and a global business outlook. Our lawyers are qualified in many jurisdictions, including the People's Republic of China, Hong Kong SAR, England and Wales, the United States, Singapore and Australia.

Our understanding of the laws and processes in major jurisdictions around the world enables us to advise our clients effectively on the largest and most complicated cross-border matters in China and elsewhere. Our strengths have been widely recognized by our clients and peers. Chambers has commented on our cross-border capabilities in the following terms – "outstanding quality of its lawyers", "high level of service that is comparable to international firms", and "strong global outlook".



Unrivalled antitrust expertise and experience

Businesses expanding cross-border through mergers or acquisitions face myriad problems: trade wars; national industrial and security policy considerations; intervention; and administrative delays. At best, deals often take longer to close; at worst, deals can collapse.

We help clients by skilfully navigating and managing the interconnected antitrust, economic and political spheres to help ensure the smooth execution of cross-border M&A transactions.

Clients also come to us for trusted advice on complex and risky matters. We successfully represent some of the largest corporations and financial institutions on the most contentious and high-profile matters. Our successes in helping our clients accomplish these goals is why our team is regarded as one of China's standout competition practices.

Awards and recognition



Competition/Antitrust (PRC Firms) - Band 1
Chambers Asia-Pacific 2018, 2019 and 2020



Antitrust and Competition: PRC firms - Tier 1
Legal 500 Asia Pacific 2020



Elite (Chinese Firms)
Global Competition Review 2020



Competition Firm of the Year - China
China Law and Practice 2017, 2018 and 2019



Leading China antitrust practice
Asian - Mena Counsel Awards 2016



Michael Han is recognized by *Chambers Asia-Pacific* as Band 1 for Competition & Antitrust and *Who's Who Legal's* WWL: Thought Leaders – Competition



Andrew Skudder appointed as non-government advisor to the International Competition Network (ICN) by the Hong Kong Competition Commission.

Local depth with a global view

China's antitrust regime has become one of the world's most important enforcement regimes alongside Europe and the United States. Global deals with a China dimension require local depth and expertise with an international perspective.

Our competition practice is one of the largest in China. Our team consists of more than 20 antitrust lawyers who work across China, including in Beijing, Shanghai and Hong Kong. Members of our team have practiced in many jurisdictions, including in Belgium, UK, US, and Australia, before joining Fangda. In addition, we have close working relationships with the competition practices of other leading firms across the Asia-Pacific region and beyond.

Multidisciplinary

We understand that antitrust scrutiny often extends to a wide range of areas. Our multidisciplinary practice can help address challenges wherever they might arise, including in intellectual property, technology and digital, privacy and data protection, and consumer protection.

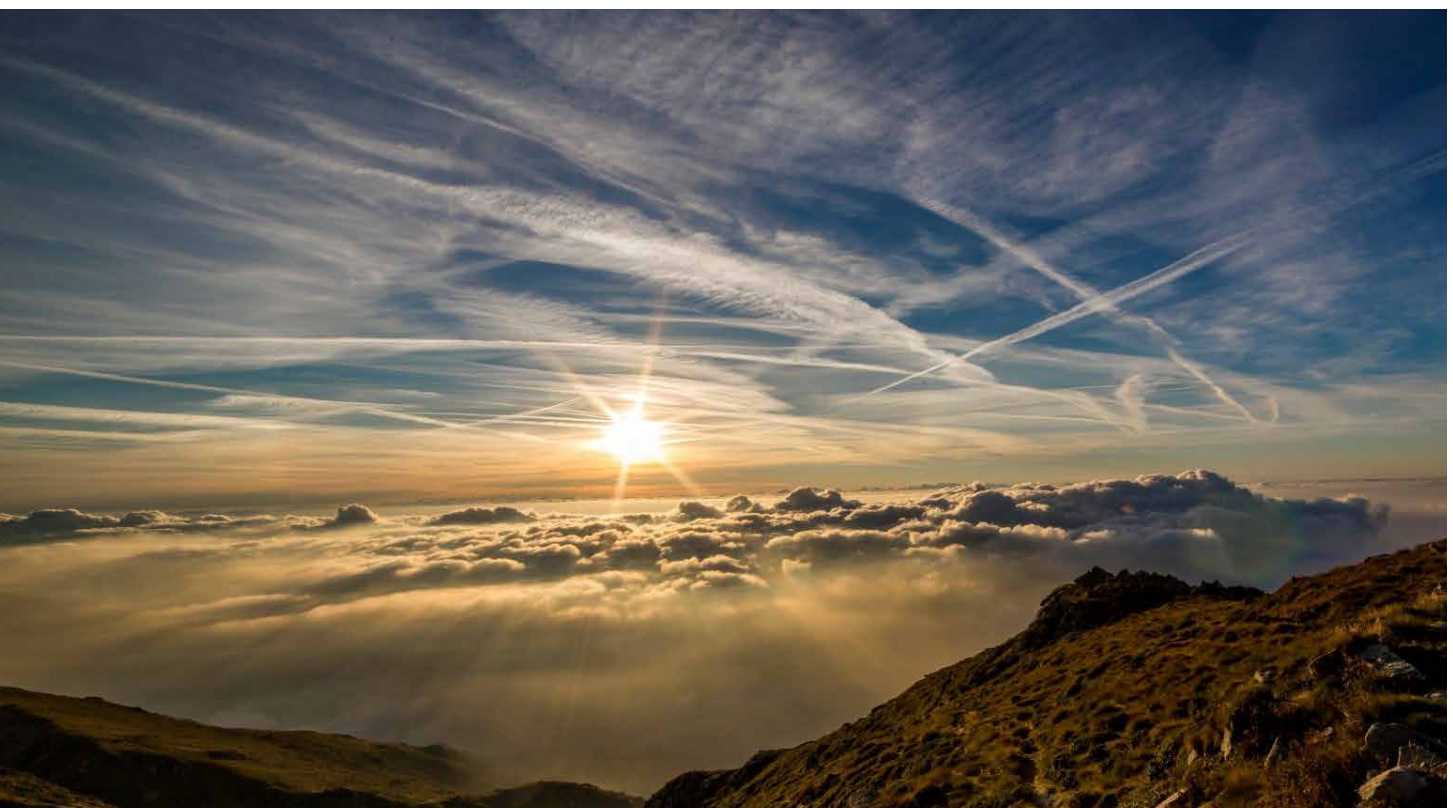
Regulatory insight

Although China's antitrust regime is active and robust, many areas of the law remain uncertain and unpredictable. This can make it difficult for businesses attempting to expand into China or to acquire China-related entities to know where they stand.

Our team is best placed to help businesses understand and navigate China's competition and antitrust regime. We have deep-seated relationships with China's regulators. We have worked with China's competition authority, the State Administration of Market Regulation (SAMR), on many complex matters, allowing us to provide clients with exceptional insight.

Additionally, our team includes a former regulator as well as a current non-government advisor appointed by the Hong Kong Competition Commission to the International Competition Network, so we are familiar with the mindset, working styles and priorities of the authorities.

Our leading antitrust practitioners have helped shape China's antitrust laws and regulations through their work and their ongoing interactions with legislators and regulators. We are regularly invited by legislators and regulators to comment on draft regulations and guidelines before they are released for public consultation.



Merger control

We have represented clients on some of the largest, most complex and toughest deals and investigations in China's antitrust enforcement.

Our team has a market-leading track record in successfully defending clients in merger control reviews.

As China's merger control reviews can be lengthy and unpredictable, we guide clients to the most optimal outcomes in ensuring their transactions are cleared. This guidance includes advising on the likelihood of intervention by China's competition authority, assessing industry and political sensitivities, and aligning global deal strategies with China's merger review processes to ensure a consistent approach that is timely and efficient.

Where antitrust remedies are required, we carefully design and negotiate with regulators to reach innovative solutions to address any competition concerns without losing sight of the deal's commercial objectives and incentives in China and globally.

Our track record of success

We have represented clients in the majority of remedy decisions by China's competition authority. Since June 2019, we defended clients in five out of the eight remedy cases.



Our recent successes include acting for:

- **Infineon** on its US\$10 billion acquisition of Cypress Semiconductor Corporation
- **DanaHER** on its US\$21 billion acquisition of GE Healthcare Life Sciences' Biopharma Business
- **Novelis** on its US\$2.6 billion acquisition of Aleris
- **Boeing** on its US\$4.2 billion acquisition of Embraer
- **Cargotec** on its €87 million acquisition of the marine and offshore business
- **Linde** on its €66 billion merger with Praxair
- **Rockwell Collins** on its US\$30 billion acquisition of United Technology
- both parties on **Disney's** US\$71 billion acquisition of 21st Century Fox
- **Becton, Dickinson and Company** on its US\$24 billion merger with C.R. Bard
- both parties on **Thales's** €4.8 billion acquisition of Gemalto
- **Broadcom** in a proposed hostile takeover of Qualcomm, valued at US\$117 billion
- **DuPont** on its US\$120 billion merger with Dow Chemical Company, recognized by SAMR as one of the "Top 10 Most Influential Cases During 10 Years of China Antitrust Enforcement"
- **AB InBev** on its US\$104 billion acquisition of SABMiller



The deal. We represented DanaHER Corporation in respect of its US\$21.4 billion acquisition of GE Life Sciences biopharma business.

The challenges. The transaction involved 26 overlapping product markets and had a challenging closing timeline. China's competition authority raised extensive questions on the products of both parties and raised additional China-specific concerns during the review.

The outcome. The Chinese competition authority conditionally cleared the transaction after we successfully proposed remedies to address their competition concerns, which included China-specific concerns. Following the conditional clearance, we also managed to obtain their approval for the divestiture transaction and buyer within two months, three weeks ahead of the closing timeline of the divestiture transaction required in the United States.



The deal. We acted as lead counsel for Cargotec on its acquisition of TTS Group ASA's marine and offshore business. Cargotec and TTS are the top marine equipment suppliers in the industry.

The challenges. The deal resulted in the merger of the two largest companies in the marine equipment supply industry. Customers and competitors raised strong objections and claimed that the transaction would eliminate the only competitor in the market.

The outcome. We formulated a novel remedy calling for a hold-separate commitment limited to China. After intense negotiations, China's competition authority accepted our proposal.



The deal. We advised industrial gas giant Linde on its high-profile and landmark merger with Praxair. The €66 billion transaction was recognized by China's competition authority as one of the Top 10 Antitrust Matters in China for 2018.

The challenges. Timely merger clearance was of the essence, and China was a key jurisdiction among the 20 other jurisdictions in which regulatory clearance was necessary.

The outcome. The deal was cleared conditionally following extensive remedy negotiations and dozens of submissions. The clearance was conditional on a complex package of structural and behavioral remedies to appease concerns raised by China's competition authority about the many overlapping markets.



The deal. We represented Rockwell Collins on its US\$30 billion merger with United Technologies Corp, the largest ever aerospace deal. China's competition authority recognized the deal as one of the Top 10 Antitrust Matters in China for 2018.

The challenges. The deal involved two US heavyweights. Shareholders were worried about political roadblocks in China. Our job was to ensure the deal would not fall victim to escalating trade tensions between the US and China, following Qualcomm's failed attempt to buy NXP Semiconductors.

The outcome. We secured clearance for the landmark deal in China. We successfully helped draft and negotiate remedies that ultimately required UTC and Rockwell to dispose of some assets and to ensure some supply conditions relating to aircraft components.



The deal. We acted as counsel for both parties in Walt Disney Company's acquisition of 21st Century Fox in China. The US\$71 billion deal created the world's preeminent global entertainment company and was recognized by China's competition authority as one of the Top 10 Antitrust Matters in China for 2018.

The challenges. Disney's acquisition of 21st Century Fox aimed to bring an unprecedented collection of content to consumers worldwide. Investors feared that the antitrust approval process in China could halt the deal due to trade tensions with the United States.

The outcome. China's competition authority granted unconditional clearance, which saw Disney acquire Fox's entertainment assets, including its Asian operations via Fox Networks Group Asia.

Investigations and enforcement

As antitrust and cartel fines increase and enforcement actions multiply, our clients come to us to defend their interests in the face of large-scale and complex investigations and court actions.

We support our clients in assessing investigation and litigation risks and in determining strategies to deal with those risks. We advise on and manage leniency applications, settlement strategies, dawn raid responses, and large-scale document reviews and requests.

We have acted in a number of investigations and litigation matters, many of which were multijurisdictional, concerning abuse of dominance, follow-on damages, intellectual property disputes, resale price maintenance and information sharing.

Large-scale litigation also requires sound economic expertise and first-class dispute resolution skills. In addition to working closely with established economic consultancies, we often act in conjunction with our dispute resolution team, which includes a number of cross-disciplinary specialists.

We have defended:

- A US high-tech company in an abuse of dominance investigation
- An international shipping company against price fixing claims in the roll-on, roll-off cargo industry
- A global entertainment company in an investigation into exclusive licensing practices
- A Japanese company against actions for cartel follow-on damages brought by a major state-owned enterprise (following an action taken by the European Commission)
- **InterDigital** in a series of antitrust actions concerning the licensing practices of its patent portfolio, which contained patents considered essential for certain telecommunications industry standards
- An international automotive manufacturer in an investigation into collusion regarding the roll-out of certain emissions control systems in China
- A leading container manufacturer in a cartel claim regarding depot fees
- An international chemical company against claims of abuse of dominance and resale price maintenance
- Three state-owned port groups in abuse of dominance investigations
- An international medical devices company in a resale price maintenance investigation



The case. We defended an international shipping company accused of conspiring to fix prices for “roll-on, roll-off” cargo. The cartel investigation was initiated by one of the former antitrust agencies, China’s National Development and Reform Commission (NDRC).

The challenges. China was just one of more than 10 jurisdictions that accused the company of related cartel conduct. We had to quickly prepare and pursue a defense strategy under significant time constraints that was coordinated with the company’s global defence strategy.

The outcome. Despite other jurisdictions imposing heavy fines after investigations stretching years, we facilitated a constructive dialogue with the NDRC that ultimately saw the case being dropped. This was the first dismissal in China of a cartel investigation against a multinational company.



The case. We defended a major international chemicals producer against allegations of abuse of dominance in exclusivity arrangements.

The challenges. The case opened with a dawn raid and ultimately led to the review of contractual measures including most-favored nation clauses, minimum purchase obligations and loyalty rebate schemes.

The outcome. Our team worked closely with economists to prepare a robust defense that ultimately resulted in reduced fines.



The case. We defended a terminals and depot operator against price-fixing claims over depot fees.

The challenges. More than 20 companies were alleged to have been involved in a cartel, resulting in one of the largest investigations initiated by a local antitrust agency in China. A critical factor in the investigation was an ambitious timeframe imposed by the NDRC.

The outcome. Following extensive document production and intense negotiations with the NDRC, we obtained a significantly reduced fine for our client. China’s competition authority recognized the investigation as one of the Top 10 Antitrust Matters in China for 2018.



Compliance and advisory

We provide strategic advice on antitrust issues in pricing, distribution, licensing and supply agreements between competitors, suppliers and distributors. Where necessary, we can also conduct full-scale competition law compliance audits to identify issues and prepare suitable strategies to mitigate risks without undermining the commercial objectives of the business.

We help our clients achieve and maintain robust and effective compliance policies and cultures. We design and implement comprehensive internal compliance programs that are tailored to their business, consistent with international standards, and aligned with the expectations of China's regulators.

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