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China Merger Control Process Should Remain Navigable Even if Tensions Rise

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Key Points

- Even if U.S.-China relations become less predictable after President-elect Trump returns to office, we expect that China's merger control authority, SAMR, will continue to review and approve most deals, including those involving U.S. companies.
- The process will remain more than just a technical regulatory hurdle for deals involving the supply of technologies and products critical to the Chinese industry, because SAMR has a mandate to consider not just competition but the broader interests of China and those of a wide range of Chinese stakeholders.
- The road to completion of deals with a Chinese dimension remains navigable for deal parties that engage early and adapt strategically.

China's merger control regime has become an important tool in its arsenal to manage and respond to geopolitical tensions. While we expect China will continue to use this deal review process during the next Trump presidency to safeguard its supply chains and delay (or even obstruct) certain U.S. deals, the vast majority of transactions will likely continue to receive unconditional approvals — albeit on extended timelines.

For the most high-profile transactions relating to areas vital to China's economic or national security, however, we expect China to wield this process surgically and strategically.

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In the four years since Donald Trump left office in January 2021, China has been implementing its "fortress economy" strategy in order to better withstand the changing geopolitical environment. This approach has involved:

- Improving China's supply chain resilience in key domains.
- Developing its energy independence.
- Bolstering domestic demand.
- Nurturing indigenous expertise in advanced technologies, such as semiconductors and artificial intelligence (AI).

In addition, China has been sharpening its own toolkit to respond to hawkish U.S. trade policies (see "Decoding Tariff Threats: What Importers Can Expect on Day 1 and Beyond"), not only by introducing export controls on key raw materials and processing technology (such as for germanium, gallium, tungsten and rare earth materials), but also by implementing sanctions on U.S. companies exporting technology with military potential to Taiwan. (See also "In the US and Europe, Export and Import Controls May Be Expanded.")

An important player in this environment has been and will continue to be China's key antitrust regulator, the State Administration for Market Regulation (SAMR). Its mandate includes not only consideration of "pure" competition concerns but also the impact of a transaction on China's national economy.

In practice, in the course of any given merger review, SAMR consults with and gathers broad input from a host of important Chinese stakeholders, including not only customers but also key domestic competitors, powerful government agencies and well-connected industrial associations.

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For transactions in strategically important sectors — notably, including those in semiconductors, semiconductor manufacturing equipment, AI, rare earth materials, information technology (IT) and telecommunications, and agriculture — the SAMR review process can be used to extract protections and benefits for Chinese consumers, delay and encumber strategic U.S. deals, and even scuttle such deals altogether if they are seen as a true strategic challenge to China. (See also "Resilient Economy and Promises of Lessened Regulation, Lower Taxes Raise Hopes for a Surge in M&A.")

In the past, SAMR has imposed conditions on global transactions to secure the supply of strategic products or services to address stakeholder concerns, including commitments to sell products at "reasonable" prices and historical volumes.

Such behavioral remedies have been imposed in many high-profile technology-related deals in the past four years, including *MaxLinear/Silicon Motion* (2023), *Broadcom/VMware* (2023), *II-VI/Coheren*t (2022), *AMD/Xilinx* (2022), *GlobalWafers/Siltronic* (2022), *SK hynix/Intel* (2021), *Cisco/Acacia* (2021), *Nvidia/Mellanox* (2020) and *Infineon/Cypress* (2020).

These measures have been used to secure favorable access to products and technologies that are considered critical for China's economic development, such as graphics processing units (GPUs) used for AI development or automotive-grade semiconductors used for autonomous driving vehicles.

Moreover, in 2022, SAMR expanded its toolkit with the introduction of a "stop-the-clock" mechanism that allows it to suspend the review clock at its discretion. This tactic affords SAMR greater flexibility to pressure deal parties on both process and substance, and can have a profound effect on deal timelines, especially for deals of significant geopolitical interest.

For example, in *Broadcom/VMware*, SAMR suspended the review clock for approximately two months and only resumed its review days before the date of the parties' final remedy proposal and conditional approval. Notably, SAMR issued its approval shortly after Presidents Joe Biden and Xi Jinping met at the APEC Summit.

But deals are not at a standstill. During the first Trump administration, China learned important lessons about just how far it could use the SAMR process before damaging its own reputation as a supporter of globalization and increased trade — a reputation it is seeking to burnish even more in the days before President-elect Trump takes office.

China refined its use of the SAMR process during the first Trump presidency, from an early broad attempt to slow all U.S. flagged deals to a far more refined approach that let through most deals (albeit sometimes with delays) that did not pose strategic or competition issues and targeted only the most sensitive and high-profile ones.

Even as the Biden administration kept up the pressure on China, SAMR nevertheless approved deals involving high-profile U.S. companies, including *Microsoft/Activision*, *Broadcom/VMware* and *MaxLinear/Silicon Motion*, all in 2023. Indeed, *Microsoft/Activision* received unconditional approval in China, in contrast to more protracted reviews in the U.S., U.K. and European Union.

In fact, the overwhelming majority of deals that SAMR reviewed in the last eight years — including those involving U.S. companies — have been approved without conditions, and, in those deals benefiting from treatment under China's Simplified Procedure, almost always in Phase I.

SAMR remains a critical but pragmatic tool to protect China's interests. Therefore, even if U.S.-China relations become more volatile during the second Trump administration, we expect that SAMR will continue to approve deals, including those involving U.S. companies, as it has done in the past eight years. The road to completion should remain navigable for deal parties that engage early and adapt strategically.

That said, navigating China's merger review process will remain more than just a procedural hurdle for global deals involving the supply of technologies and products critical to Chinese industry. As China continues to safeguard its supply chains, and with ongoing U.S. efforts to reduce its reliance on China in certain sectors, SAMR will have an important role to play as a regulator.