

China Economy Lecture Series featuring Angela Zhang – Chinese Antitrust Exceptionalism: How the Rise of China Challenges Global Regulation, April 29, 2021

– [Announcer] Hello everybody and welcome to today's China Economy Lecture. We'll get started momentarily. We're just going to wait about a minute or so to give people who are logging on at the last minute, a chance to get settled. Thank you for joining us.

– Alright, I know that people will still be trickling in, but let's be respectful of everyone's time and convene our talk so thank you so much for joining us for the Fairbank Center for Chinese Studies, series on the Chinese economy. I'm Meg Rithmire I'm an Associate Professor at the Harvard Business School where I focus on the Chinese economy. It's my absolute pleasure to welcome today Professor Angela Zhang who's Associate Professor and Director of the Center for Chinese Law at the University of Hong Kong. She holds an LLB from Peking University and three degrees, her LLM, JD and JSD from the University of Chicago Law School, where she worked directly with Judge Richard, A. Posner one of the American Jurists that almost anyone knows by name. Angela is a specialist on a wide range of issues in Law and Economics in the state and business in China and beyond China, her work has been published widely in law journals and an array of popular outlets and we're very fortunate tonight or tomorrow morning, depending on where you're joining us It's morning in Hong Kong, to hear about her just published book, "Chinese Antitrust Exceptionalism," from Oxford University Press. The book explores the issues of antitrust in China's domestic and International competitive environment it's a timely topic and no one better to talk about it than Professor Zhang. So Professor Zhang will speak for about 45 minutes or so, to introduce some of the ideas in the book and go beyond the book to talk about more contemporary issues, and then we'll have hopefully plenty of time for questions and answers. I remind you that you're welcome to put your question in the question box at the bottom of your screen at any point, feel free to identify yourself if you'd like or not ask questions anonymously is totally fine and we'll look forward to hearing from Professor Zhang. So thank you so much for joining us

– Thank you Meg for the really generous introduction. Hello everyone, good evening in America. Good morning, in Asia. So I prepare some slides I'd like to share my screen. Okay, so you see that okay? Yep okay. So, in my book, "Chinese Antitrust Exceptionalism," as you see from my background, deals with how China regulate as an antitrust regulator, as well as how China is regulated as a target for regulation and when I say Chinese exceptional is because China's unique political and economic institutions, which result in strong power imbalances between businesses and the government. Now this has implications on both how China regulates and is regulated, for instance, unlike other major antitrust jurisdictions, such as the EU

or the United States, businesses rarely challenged the Chinese antitrust authority and as a result, entire administrative process is more or less internalized within the bureaucracy and this makes it very important for us to understand the dynamics of the bureaucratic politics in China. Now this power imbalances between government and businesses also make China a very unique target for regulation in foreign countries, foreign policy makers often have very difficult time to disentangle the relationship between business and the state and this make it very challenging for them to determine what exactly is the scope of the Chinese companies are these individual companies, or are they just part of the Greater China, Inc. So the difficulty of answering this basic question of scope, makes Chinese companies very vulnerable to antitrust challenges in other countries. So in the next 30 minutes or so, I would try to give you an overview of the issues I explore in this book and also show you how this analytical framework is useful for explaining the most recent regulatory events involving Alibaba Group and other Chinese big tech firms, and also hope to offer you some insights into the future, US-China relations. So how does China regulates? Now just last Saturday, Alibaba received.... Not last Saturday, it's actually April the 10th. So Alibaba receive a record fine the 2.8 billion US dollars from the Chinese antitrust authority. Now guess how Alibaba responded. They thanked the regulators and as you'll see this press release announced by the firm the firm accepted the penalty with sincerity and it will ensures it's compliance with determination. Now contrast this with Google, which has been slapped with three fines from the European Commission and as you can see from the press release there, Google was prepared to fight tooth and nail with the commission in EU Court and it is doing it right now. Now, Alibaba is not an exception. Now China has been enforcing its antitrust laws since 2008 and more than 12 years has passed since the law was implemented, however, so far, very few of the decision made by the Central Authority has ever been challenged by business in court. Now, for instance, in 2015, Qualcomm, an American chip maker receive 1 billion US dollars fine in China, but they settle it with the agency. Now Tetra Pak which was hit with a fine of almost 99 million dollars in 2016, said in this press release as you see in the last sentence, "We're disappointed with the decision," "but we decided to accept it and do not intend to appeal." So why are companies reluctant to challenge China's antitrust authority? Now, what makes it even more bizarre is as companies are reluctant to challenge agency decision the overall number of administrative appeals in China is growing very rapidly. Now this is actually because in 2014, China amended it as Administrative Litigation Law, making it significantly easier for plaintiffs to Sue the government. So here you see from the economist report on this slide, you see a significant surge, in court cases. Now so if the judiciary is improving, then why haven't we seen more plaintiffs challenging enforcement in court. Now, for those of you who understand China very well, I mean, this is the Fairbank Centre, so you have a lot of experts here. Well you know that generally they need to maintain the relationship with the government and especially if

they need to repeatedly interact with the government, So if you challenged the agency in court, you're essentially burning bridges with the government. Now, but what you might not know, is that the Chinese Antitrust Authority... Not just the Antitrust Authority I would say other law enforcement authorities as well are very adept at using media strategies to entice firms to cooperate and settle in what I call strategic shaming strategy. I won't emphasize on the point of strategic because they don't apply this uniformly to all firms. They only apply to strategically. Now, let me give you an example, in 2013, The National Development and Reform Commission the NDSC one of the Chinese three former antitrust agencies announced on Chinese live television, that they have been investigating BiosTime and several other influence on the manufacturers for antitrust violation. Now the next day, the people's daily, which is the parties mouthpiece reviewed the name of a few more companies that were involved. Now curiously, Meiji, Beingmate and Fonterra these three companies, which were subject to investigation at that time, but they weren't omitted in both the CCTV or the people say the news. Now so you'll see that the NDSC in this one single case selectively exposed these firms to three different levels of media publicity, and generally speaking, the less cooperative a firm is, the more it is exposed negatively in the media now Biostime, which is actually a Chinese company based in Hong Kong was subject to the most negative media exposure because it initially tried to launch a vigorous defense and as a result, this firm lost over one third of its market capitalization within one week. Now at the end, Biostime also received a very hefty fine, but the market capitalization loss was much, much higher than the fine that they ultimately had to pay. Now on the other hand, other infant formula firms that were proactive in settling with the government were rewarded with very generous leniency. Now, for instance, here, I show you why as executives, one of the infant formula executives, even when on the dialogue TV show with a team of NDSC officials, stating that they had quickly cooperated with the agency to provide all the documents the NDSC requested immensely rectifies wrongdoing by reducing prices. This company ultimately received no penalty from the agency. Now this tactic was very effective from the NDSC standpoint because the agency had resource restrain at that time they had only about 25 people in Beijing. So they really cannot afford a very drawn out court battle, and so if this method allows the agency. They don't need to spend resources in defending the case of fighting it in court. So it quickly allowed the agencies to establish itself as a very forceful and serious regulator. Now, as you know, Alibaba was subject to a record fine on April the 10th. Now what was more damaging to Alibaba is actually not the fine it is what I call the strategic shaming session that was inflicted on the firm. So, on Christmas Eve as you may call last year, the Chinese antitrust regulator posted a very short, only one sentence announcement that it had been investigating Alibaba's "Choose One From Two," business practice. Okay, and then only 10 minutes later, the People's Daily publish a three long commentary endorsing the investigation. So this moves was

probably prepared in events because this commentary seems to be designed, to seek first mover advantage and to shape the rhetoric of the discussion of this case. Now, as you may recall, this one sentence announcement caused Alibaba stock prices to tumble and on that day Alibaba's stock dropped by more than 13% in a single day, wiping out over a 100 billion US dollars off market capitalization. Okay, so compare what that to \$2.8 billion, that was really nothing. Now, there is nothing particularly wrong with a government agency announcing investigation on his website, right, but we should also be aware that this is the first time the SAMR Antitrust Authority has ever done that because in the past it has always kept a very low profile in investigating cases, precisely for fear of damaging company's stock prices. Now I should also note the timing of the announcement was strategically planned in advance because it was on Christmas Eve, so the long haul big break will allow the agencies room to moderate the market reaction if the announcement turned out to be too harsh. So this need for moderation, might explain why the agency release this positive news on a Sunday before the next trading day, which is December the 27th, stating that it had completed evidence gathering and then the firm was very cooperative during the process. Now some of you may be thinking if the authority is rarely challenging court, then they should be free to do whatever they want. I mean, that's actually not true much to the contrary Chinese officials are subject to various severe bureaucratic constraints. Now, as one official once told me we can only dance within the boundaries of our prescribed stage. Now, what he was talking about was he referring to this phenomenon, of power fragmentation in a Chinese bureaucracy, which impose significant constraints on any agency's freedom of action. So because each government department in China have their own responsibilities and objectives to define the act of action, but at the same time, they also have overlapping responsibilities so this kind of tough war and inter-agency rivalries are very common and that's what I call this Chinese style of checks and balance. Now Chinese antitrust enforcement is actually a prime example of this, now in the first decade of the antitrust enforcement. The power to enforce the law was split amongst three different agencies. You have the NDRC which we already talked about, and the SEIC these two agencies were jointly in charge of conducting investigation. Now you also have the Minister of Commerce become MOFCOM, was in charge of merger enforcement, the different missions, culture, and structure of this three agencies, happily influence how they formulate enforcement agenda their regulatory approach, as well as the final regulatory outcome. Now let's first take a look at the NDRC. Now this agency used to be the state plan in commission, and was very powerful when the Chinese economy was still essentially plan and over the years, the NDRC has seen its power decline as market reforms steepen. So the NDRC saw antitrust enforcement as a golden opportunity to step back into the policy lime line and to fulfill its original mission of price control and insurance stability. Now, in many cases investigated by NDRC you saw companies actually volunteer to reduce prices. Now from an

international standpoint, we think it's like really unusual for companies to do that, but we also have to understand this move, this extra legal remedies offered by these companies are precisely designed to please the regulator because reducing prices is perfectly consistent with the NDRC's original mission of price control and stabilizing prices. Now, I should say that in the Qualcomm statement you see that at the bottom, the firm offer a 35% reduction in the royalty that they will charge for the Chinese licenses, but that, very important remedy, arguably the most important remedy, but was not included in the NDRC's ultimate decision, So this royalty reduction deal was agreed upon, behind the scenes. Now understanding the culture of an organization is also very important to understand its behavior. The NDRC used to be the planning commission and to this day remain a very important player in macro economics management and industrial planning and that's why people call it the Little State Council. It is not really a law enforcement agency and it has like almost 1000 staff, but very few of its members posses a law degrees. an say, this law enforcement's not really in the DNA of this ministry, does this is not surprising doing antitrust investigation The NDRC continued to employ this old tactic of holing into fields with companies, and some of these interviews were so controversial. That they led to accusations of administrative power bills and violations of due process. That probably also sold the seats for the complaints from Corporate America, which ultimately led to Detroit war, a few years later. Now in 2018, the three former antitrust agencies were consolidated into a new Bureau, which was absorbed by the SEIC to form a new ministry called the SAMR. Now because the SEIC had been a market regulator with decades of experience in law enforcement. I saw this as a very promising start for professionalizing Chinese antitrust enforcement and indeed since 2018 we have seen the new anti-trust Bureau inject more transparency into its process and streamline the module review procedures and there have less complaints and have few complaints from businesses about due process violations and this is good news, but it doesn't mean that the SAMR wouldn't use antitrust law to achieve broader policy objectives. Now some of you may have read in the news, the SAMR and a few other regulators recently held administrative guidance meeting with major Chinese tech firms after the Alibaba fine. Now at the meeting, a lash number of firms, as required by law's general offer to vetify their conduct such as the "Choose One From Two" policy that Alibaba was investigate for and interestingly now this firms offer was so broad. They went far beyond antitrust law as I show you here this compliance letter from JD, which emphasize it's a hindrance to homeless of law, consumer protection law, e-commerce law and monopoly law, advertising law, price law, all of these are within the enforcement mandates of the SAMR. So it appears to me that SAMR is leveraging its antitrust function to strengthen its enforcement in many other areas of market regulation. So this development, this very new development re-enforced my point about how the mission, culture and structure of an enforcement agency really matters for any enforcement outcome. Now I want to shift my focus to the International

arena and explain how China weaponized antitrust in the US-China tech war. Which started by noting that the US executive branch has wide discretion in prosecuting firm businesses and individuals, and has strategically use its legal discretion as an instrument of trey in foreign policy against China and this is quite clear in cases like Huawei and ZTE and this case were a swerve wake up call for Chinese policy makers who are scrambling to decide, what kind of policy tools we can use to counter the US long-arm jurisdiction. Now China quickly identify antitrust as an appealing weapon to use against the US. Now this is primarily because antitrusts allow the Chinese government to exert extra territorial jurisdiction over US businesses practices. As long as this companies have sufficient sells to the Chinese market. Now, for instance, a large merger transaction between a US company and European firm, which seemingly have nothing to do with China can be held up by China's merger control. Now Qualcomm's acquisition of NXP in 2018 was one such example that they obtained clearance from age restrictions and China was only one that held up the seal. Now, China didn't block the seal. It just strategically delay the approval to such an extent that the parties eventually jeweled the transaction. Now as you see recently in Wall Street Journal, Cisco's acquisition of Acacia was similarly delayed for a really long time, even though this deal was ultimately clear, but Cisco needs to pay a much higher price for the delay and just last month Applied Materials, which is top US chip supplier have to walk away from its proposed deal to acquire a Japanese electric company again because of the Chinese approval delay. Now, in addition to holding up large mergers, the Chinese antitrust agencies has also floss antitrust as a weapon to investigate foreign firms. As you see in this news article from Global Times. So, it was saying that, China can investigate companies like Qualcomm, Cisco and Apple under laws like cybersecurity reveal law and anti-monopoly law. And so as China-US tension increase, Chinese antitrust may become like a battle ground for Trey and national security issues. Now let's examine how China itself is regulated by foreign antitrust authorities. Now, China is not only unique as a regulator, but also as a target for regulation. We would start by looking at the antitrust challenges Chinese companies face in Europe. Now after 2008, Europe saw a very large influx of capital from China. The vast majority of these investment were made by the Chinese state on firms and this gave the European Commissions a very big headache, are these companies separate entities or are they just part of a bigger China Inc under the Chinese government, and for those of you who understand this area of literature I mean, that's not really a black and white answer to this question and this usual regulatory emphasis on ownership and control can actually produce misleading results. Now in 2016, a French state owned firm and a Chinese nuclear power company, was EDF and CGN wanted to create a joint venture in the picture here in Hinkley point in UK. they've run into a very big problem because the European Commission decided that for the first time that it will actually treat all Chinese firms in energy sector as one single firm for puffiness of antitrust analysis and this had huge ramification for EU law, but

ironically also puts a commission at risk of jeopardizing its own jurisdiction over mergers between Chinese firms or extra cartels between firms. Because if these companies are just part of China Inc, then commission should have no authority over those cases because these would be deals made internally within a company. Now, this explains why the EU is increasingly looking for alternative regulatory tools in dealing with Chinese investment and its most ambitious proposal came last year when the commission released a white paper, proposing a new motor control regime to best stay back acquisitions and many observers believe that this move is precisely targeted at Chinese firms. Now, even when Chinese firms are facing regulatory trouble in Europe, they are also facing challenges in United States and it's well-known that China's increasing trade dominance has soared anxiety among US politicians. And that was one of the reasons why the Trump Administration imposed very high tariffs on Chinese steel at the beginning of the destroyed wall. And the fears of Chinese dominoes were further elevated during COVID As Americans realize how much they depend on China for PPE supplies. And in fact, America now imports 97% of its antibiotics and 90% of its vitamin C from China. Now at the same time, China dominance in those essential component markets have been conducive to the formation of export cartels. And in the past two decades, many Chinese manufacturers have been hit with antitrust litigation in United States, precisely for conducting export cartels. Now the most famous case involves a group of vitamin C producers from China. And this case went all the way up to the US Supreme Court. Now these users did not deny that they have coordinated prices, but they defended themselves on the basis that it was the Chinese Government that asked them to fix prices. The Minister of Commerce from China also acknowledged by submitting an Amicus brief in a very unprecedented move, acknowledging that it has indeed compelled these firms to organize the export cartel to avoid anti-dumping challenges. And in the end, the Supreme Court decided that it was not bound by the interpretation by the Minister of Commerce and instead defer to the US branch, in deciding how to handle this case. So this makes the Chinese exporters in a Catch 22 situation because of the abundant supply in China, and sometimes over supply in many areas. So if they compete fiercely, inevitably that would drive the prices so low and then they could be subject to anti dumping charges. Now, on the other hand, if they coordinate in the fence and raise prices, then they might be, violating US Antitrust Law. So this situation puts a Chinese exporters in a very precarious position. Finally, I'd like to offer some of the books inside US-China regulations, Chinese regulation, the big tech, as well as data regulation. Now for a really long time, people ask this question, is China a friend or a foe now more and more if you may decide that China is no longer a friend. But the reality remains that the Chinese and the US economies are tightly integrated and there are mutual benefits for cooperation of both sides. In many areas, including climate, it is a hot topic recently. So the question becomes in the absence of friendship and trust, is there any helpful cooperation? Now I hope this book tells you yes. You will see,

although foreign firms are vulnerable to regulatory attacks from Chinese authorities, Chinese firms are equally vulnerable to attacks from foreign regulators. And we are seeing tightening scrutiny over Chinese firms from both the EU and the US regulators. So the fact that both sides can obtain significant leverage over the other is actually a good thing because this is a kind of hostage exchange situation that is essential to maintaining peace between the two countries. And that's precisely why I think more integration rather than less it's helpful for peace. Now, for instance, if more Chinese companies are blocked from the US market, like what TikTok, WeChat, like Huawei have experienced, then the United States will have less leverage over China. And that actually makes the US operation in China... Think about Qualcomm, think about Tesla, like more vulnerable. This company would become more vulnerable in China. Now let's also take a look at the book's insight on Chinese Intech regulation. So in the past couple of months, a regulatory storm has blown into China's tech sector, it's groups, IPO, which is supposedly the largest IPO ever was suspended just 48 hours before its launch. Now, many of the major themes of this book, which we just talk about incredibly helpful in explaining what is going on with trends and regulation of big tech. And we all know that Jack Ma's speech was one point trigger, but giving all this regulatory concern that people have, particularly regulators are half over ends. Why did it get the green light to launch its IPO in the first place? So in this I publish in a project since recently, I argue this has to do with power fragmentation in the Chinese bureaucracy, which is a point I consistently highlight in this book. So Chinese FinTech companies like Ant they very good at seeking regulatory arbitrage. And by taking advantage of this conflicting goals and missions of different agencies as we talk about. So the People's Bank of China, which oversees prudential regulation has been a very persistent regulator and has kept a very close eye on Ant from the very start. Now, other financial regulators, like the China Securities Regulatory Commission, the CSRC, have their different agenda, the CSRC actually expedited hence IPO. Because it saw that as an important boost to the domestic securities market, particularly when many Chinese firms have been forced to delist from the United States. So in the eyes of the CSRC, this successful launch of Ant's IPO, what have been a piece of national pride to the US sanctions. So again, you see different agencies have different incentive in regulating businesses based on their different missions and objectives. Now, this analytical framework in the book is also helpful for analyzing other areas of regulation. Just to give you an example via data, because it's a very hot topic these days. Now, similar to antitrust, bureaucratic politics also dominates administrative enforcement process of data protection law. And in China, there are constantly at least four regulators in charge of legislation and enforcement. And there are other industry regulators that could be involved as well. Now, similarly, to decree the power that the government has over businesses, again, we go back to the first line about the power imbalances between businesses and government also leads to very deep foreign mistrust. So foreign firms



when it comes to data security. I mean, that's precisely the reason why firms like TikTok, WeChat have experienced many difficulties as they expand in other countries like the United States precisely because of data protection issues. And I would like to pause there and thanks very much and really look forward to discussing this book with Matt and the audience here, thank you.

- Wow, thank you, Angela. That was a tremendous amount of insight and I have a lot of questions myself. We are opening it up to Q&A, so please do type your question in the Q&A box. We already have a couple, but I'm going to take my privilege and ask my question first. And so the first has to do with whether you have observed the articulation of a theory of Antitrust in China, along the lines that we see these kinds of intellectual debates, in the United States, in Europe over time and regulators in those two markets have different authorities and antitrust. And so if you've seen the emergence of any consistent principles or debates on antitrust within the Chinese market and then secondly, which someone's asked about the application of China's anti-monopoly lots of SOEs in China. And so whether there's any consideration of using as you talk about power fragmentation, you're using certain parts of the Chinese bureaucracy to try to discipline SOEs within different parts of the Chinese fragmented bureaucracy. So, those were sort of my two questions and one from the audience so far.

- Thank you very much, but well these are very interesting questions. So first of all, regarding whether there have been any consensus as to how to regulate TikTok in China, the scope of the public discussion is limited due to censorship and obviously the government controls the media. So what we see from most media outlets, you see more or less a consensus of what to do, which is driven down from Beijing, a top-down initiative. And what is particularly unique about this firm of the Chinese antitrust enforcement is unlike before where it's mostly a kind of like a bottom up process. This time is really driven from a top-down initiative. So this is like part of what we're seeing now is part of a larger and law enforcement campaign against this companies. So all the rhetoric have been closely shaped as you said, as soon as Alibaba was investigation was announced, there was New York Times and there was People's Daily, commentary put it there just to shave the rhetoric because they know other media outlets will quote, this commentary will also guide other media outlets, including those commercial media outlets as well. I mean, so at least on the surface, you sort of see a consensus of what we need to do, and everybody applaud the government's action, but underneath, I believe there must be different opinions, that we don't see in the public discussion. And then obviously the FinTech Companies themselves have very effective lobbying. They have been preparing for this day for a really long time. And they have done tremendous lobbying. I suspect behind the scenes as well, as you see, in early November last year, when the agency released a draft guidelines on online platform. And then if compared that version of the guidelines with the version that was

finally published in February this year that was a lot of changes and all these changes were quite positive and favorable for big tech, I mean, they removed a lot of controversial provisions supposedly will make it easier for regulator, to find dominance, to determine dominance and supposedly will make the possession of data, and more like a new, more likely to lead to dominance to remove all these controversial provisions. I mean, so there must be a lot of things happening behind the scene and there could be internal disagreement as to how we deal with these companies. I mean, even if you say from the standpoint of those regulators, I think they are also confronted with competing policy goals here. On the one hand, you do want to foster innovation and because these are the national champions. I mean, if you think about techno nationalism, it doesn't seem to make any sense for China to crack down its own tech firms. On the other hand of Ontario Government also have agenda and policy to preserve social stability. I mean, because the concentration of the market has led to a lot of antitrust issues, not just the antitrust, but also social problems like inequality, employment, labor, a lot of issues. I mean, so there is also other policy objectives that government need to consider. So they are internally, I'm sure the government needs to balance these two competing goals. And that's precisely why I believe, the big tech has been very effective in the lobbying and it can also be reflected in the recent move by the anti-trust regulator. Because as soon as you see after Alibaba was fined, the market was panicked, who will be next? Will it be my time? Will there be Tencents? Everybody's calling me, it's like that Angela tell me who's next? Then I said, I will reiterate those points. I just talk about, the government has many policy that consideration here. So it's not surprising because you see a few days later, the SAMR announced that we're gonna have this conference meeting with all these big tech firms. And if they rectify their behavior, submit all these ratification plans and you make this commitment in advance in public. And it seems like they're not going to investigate them. Let me say that the agency is simultaneously extending both a promise and the fret here, if you complying, then there's no more investigation and that calm the investors, tame the market. As you'll see how much Tencents will then make one stockers come up in the past couple of months, because of Alibaba, because people are afraid the spill may affect into their companies. So, this tame the markets, assure the investors. On the other hand, they still want to maintain a fret. I mean, if you don't behave, I can come back to investigate you any time I can come back to investigating a POS exclusionary practice as well. They have perfectly legitimate reason to do that. So, you see, this is a very Chinese style of governance and they also reflect this kind of multi agenda on the government's plates, yeah. And regard to the second question about SOE, I'm actually, there is a perfect example in this China's Antitrust Enforcement. In 2011 the NDRC, which is the former antitrust regulator, they investigated China Telecom and China Unicorn. Two of the largest State owned telecom firm for abuse of dominance. And that case was also strategically announced on the Chinese State Media. It

was actually announced State Television to symbol lots of abuse time case that we talked about. And actually these are the only two times, in the past 12 years, I've ever seen the Antitrust Authority announce this case on state media and this move is precisely to gain momentum, to push forward this case because that case thing run into a lot of trouble bureaucratic resistance. We have already talked about it in the paper. I mean that in the book they're not challenged in court, but they face with a lot of bureaucratic constraints when they go after, particularly go after large stable firms. Because this large state firms themselves have bureaucratic rank. Their rank is actually higher than the antitrust bureau had. They didn't take them seriously at the beginning, at the time 2011, there's only three years when of the antitrust enforcement was antitrust law was implemented. I mean, so they didn't take the authority seriously, even when the authority go in to investigate them. And they also have a lot of backers behind them because the state of firm can more easily leverage and lobby within a government. I mean, they have the sector regulator, the MIIT, the Ministry Industry and Information Technology, which is a sector of regulator overseeing telecom pricing. So the sector recognized were upset with the MDSC investigation, because MDSC also have some policy control over telecom pricing. So they see this antitrust investigation, as a move of agency to trying to expand and thinking like it's turf and encroachment of MIIT's territory. So MIIT, fiercely objected to this. And then there is also the SESAC, like the state assets watchdog, which concern if you bring this kind of cases and it's going to have strong repercussion to the firm's stock prices, it will lead to state assets loss. And that was precisely what happened. I mean the NDRC, when they announced on the State Television, it caused this to firm stock plummets dramatically on that day, because it sent a very back signal to the market was like, is this firm falling out of favor with the government wide. Why is this government using Chinese antitrust laws dealing with this State owned firm? So you imagine all this bureaucratic existence, gave NDRC very big headache at the time, and that's precisely why it used media to try to push forward this case. And eventually this case resulted in kind of like a compromise. So this tool firms offer remedies to kind of address some of this concern. It also possibly also expend NDRC's turf in a sense, because if you look at the final remedies they offer, they actually have not just how to dress the antitrust issues, but to expense NDRC's control over telecom pricing. But at the same time NDRC did not fine this company, so the case was suspended, there was no penalty, that's just ended so I see it as a compromise behind the scene among this different bureaucratic interests, but that's a perfect example of how fragmentation in China, yeah.

- Yes, it is the perfect example. It's a fascinating case. So, I'm gonna ask the question from Bill Sao, My colleague at the Fairbank Center who asked a similar question about the different standards and criteria for monopoly and antitrust in the US versus China. And so in terms of, for example, looking at if I can kind of add in a little bit

to his questions. So, in the United States for such a long time, it's been about price. It's been about price as the determinant of abuse of market position or monopoly. And in China, clearly it's not just price, it's something else. And so is there a consistent way of thinking about those standards in China and how would you compare it to the US?

- Well, in China the authorities are very much up-to-date. I mean, they follow whatever the US, the EU was talking about very closely. If you've talked to people on the ground, I mean, totally on top of everything, every single law, every debate that was happening in our jurisdictions. So at the academic level, or even at the agency level, I think they're well versed with what's happening right now. I mean, there's a bigger debate in the US right now, whether we've from the traditional emphasis on price to maybe broad objective about quality, about innovations. I mean, but in China I think our authority need to take into account much more consideration than just price innovations and quality and all of these will be important priority considerations, but I think they need to consider more. I mean, as you see, recently in this in Wall Street Journal, there's been a lot of rumors from the media. I mean, for instance, Alibaba has asked to divest media assets. Those would be rumor. I mean, obviously at the end, you see the pound of this decision. There's no divestiture of any sort. And by the way, on the Chinese law, there's not really a legal basis for the authority to ask the firm to divest its assets on the face of abuse of dominance, anyway. So at the time when I saw the Wall Street Journal paper, I was quite puzzled. I mean, where does this come from? But at least, you know, it has to come from somewhere within the bureaucracy, somebody at the bureaucracy, had to post, you know. We just feel uncomfortable. This firm has come so big and has the power to control public opinions. I mean, there have been instances where it seems like, the firm has manipulated some of the public opinion that involving the scandal of all they could is executives and that worry the government right, with the control of the public opinion was something that they're worried about. I mean, but as to how the government deal with have those issues, they could use antitrust to solve this problem potentially. I mean, because if they were bought in, they bought in, South China Morning Post, they could unwind this transaction, although it's not a very strong legal basis, but at the same time, as I talked about in this talk, sometimes firms offer extra legal remedies to please regulator. Like, there's nothing wrong for the firms who just volunteer, even if the government does say in it's decision recommends you see the court position. The most important remedy was not incorporated in the legal decision. It was bargained behind the scenes. I mean, so I would not be surprised if the firm diverse some part of the assets that government doesn't like, even though it's not theoretically under the law. And it's to address some of the concern of the government over these big tech firms.

- So related to that, there's an excellent question from Lacey which is taking all of this into consideration, do you feel that China's antitrust enforcement and practice is strengthening the rule of law or weakening it, so, and there's evidence on both sides. And what do you think?

- It's a very complicated question. I mean, as a law professor, what I see is particularly promising is the agency restructuring that happened in 2018, which consolidated that all enforcement power under the SAMR, which is the new ministry, because this is a traditionally, a market regulator had decades of experience in law enforcement. So naturally you will expect this agency will know what it's doing unlike before, when we have industrial planner, NDRC to enforce this law just when does agencies go out to talk to merchant and then force them to lower prices, I mean, that's not how it's supposed to be done. So I do see some positive sign with Chinese Antitrust Enforcement, particularly with this restructuring, this is to change institutional structure, which is hugely important, but that's a point that tends to be overlooked because lawyers and the public tend to look at them Law itself, kind of look at the black and white letter. They didn't know, you know, how much the institutional factors, including the people there, the culture of the organization, the structure of the organization has such a huge impact on how it has to enforce, right. I mean, but on the other hand, as you see in the recent round of the law enforcement campaign, which was very much driven by a top-down initiative, right. I mean, you'll see this kind of repeated use of strategic shaming, you see this kind of on Alibaba, right which causes firms to loss. How much like 13% of stock price and they're still not coming back, you know, even though it's stock prices has to rebounded, when the time of the decision was released, actually rebounded by up to 8% on that day, but that's still not coming back because the stock prices was still quite suppressed, but you know, this kind of strategic reputation damaging flick on the company will have a long lasting impact on this firm. I mean, that also explain why the firm was very proactive in cooperating with the agency, remember back in 2015, the Alibaba also have a public route with SAIC, which is the predecessor of the current antitrust authority SAMR at that time, Alibaba did fight very fiercely in public. You know, it complained about the agency's improper procedure of scrutinizing those counterfeit products and then make a public roar, calling the Director of the E-commerce Bureau blowing the black whistle. I mean, although eventually that public roar also caused Alibaba stock to tumble by 8% on that time. But you see, at that time, the firms were fighting you know, more ready to fight, you know, but here it was like completely tame right. I mean, those, like we thank the regulator, ready to move on, you know, it's a very different dynamics. So because this strategic shaming strategy was extremely helpful, and you also see, again, you know, this kind of administrative interviews that have been conducted with all this big tech firms. and this big tech firms volunteer to offer preemptive commitments of compliance. I mean, and

then now there's no more, you know, it's things like the government is making a promise that if you can plan, we're not going to, you know, go after your past practices, I mean, that doesn't seem to be all the basis of you know, law. I mean, if you have cuts, you know this firm has conducted exclusionary conduct that could be violating law and it's the responsibility way of the agencies go off at this company, it's like what is the bigger basis of the settlement? I mean, this is not even you know something within the realm of the antitrust law. There's not this kind of, it's not a legal basis for doing that. It's preemptively settled. And also think about along with the palliative decision that was issue on Alibaba, the SAMR impulse a mystery guidance notes for Alibaba, there was a 16 point and mystic guidance note. That was hardly mentioned in any media coverage. But if you go to take a look at this 16 guidance now, which Alibaba is required to submit and ratification plan by the end of this month, and they also need to submit an annual report to the agency in the next three years, you will see this guidance note not just deal with antitrust, it deals with all sorts of compliance issues that the firm need to deal with, I mean an audit compliance, obviously also for within the mandates of the antitrust authority SAMR, which is just talk about this. They tried to leverage antitrust as the function to expand into other territories of enforcement, right, recommends were spilled over was clearly, well, it's very explicitly in the case that in this administrative guidance and law and again, administrative guidance, there's no legal basis in law. Like I mean, you can make administrative guidance according to law or not according to law, right I mean, it's just guidance from the agency, but in the current political environment and this situation is Alibaba going to follow this guidance, yes. I mean, I can bet they're going to submit this replication plans, but I can bet they're going to submit this annual report and there will be no challenge. Right I mean, so you do see this kind of repeat dynamics, unfortunately you see this kind of extra legal remedies that we're offered you see the extra that you go measure that was applied in the current round of the law enforcement campaign.

- Okay. So I'm tempted to say then, you know, I guess then that the conclusion is that there's really no rule of law in China and hardly even rule by law. So for a long time, right you know, the kind of theory of what legal development in China was, was, you know the development of legal foundations for the state to rule, but not to constrain itself. But now I guess what I'm hearing is that now there's not even this idea that there should be law that forms the basis of the state power the state power is kind of exercised at will. is that the correct conclusion?

- I think it depends. The answer is it depends because like, as we see in the slides that I show, in this economist paper and as well as the data disclosed by the economist, right. I mean, you just see a significant such administrative appeals, like appeals against the

government in Chinese court in recent years, like because of the amendment of administrative litigation law, which significantly reduce a barrier for ordinary people to file suits against government, right. But, so far just within the realm of, you know, this kind of cases between big business and the government, we don't, haven't seen, you know, that law change, and that promising change has affected that category of cases, right. I mean, so maybe for some other categories, like, you know, ordinary citizens suing a small Bureau of agents, which can solve the government's agency problem, those cases may be easier, trademark disputes maybe easier but not with regard to, you know, the biggest case between government and the businesses.

- Great, so that's a good segue into a large number of questions we have basically on these big tech firms. So a lot of questions related to Jack Ma why did he give the speech that he gave in Shanghai? Did he miscalculate or misunderstand something about this new direction, or as you say, this new political climate, and what is next? I mean, so I know everyone's calling you to ask what is next and who is next, but what are the implications for companies like Tencent and Baidu given what happens and relatedly Menyhah from Baiyu asks, is there an exit option for Alibaba? So given this, you know this kind of political climate you've described where antitrust will be wielded as a weapon in a larger struggle of the state versus large firms, is there any choice of like voice or exit, right. Basically for a company like Alibaba or it's what I'm hearing from you is they just must say they thank the regulators, ask for another fine if they need to ask for another fine and move on, but is there any potential or any space for firms like that to resist?

- Right I mean, that's a long question here, so maybe I do it one by one. First question is about Jack Ma why did he make that speech? I mean, everybody know he's like superstar business leader and have this cult lights, you know, a role model around him and then he's, but at the same time, if you look around, you know, the Chinese leading entrepreneurs, he's very much an outlier, he's very outspoken and he liked this media engagement, and if you contrast this with Chen Yingjie of Tencents, is much more low-key, much more reserved. So in a sense Jack Ma is already an outlier among Chinese entrepreneurs and as to why he made that particularly controversial speech in Shanghai, this really, we need to really, if you don't mind, I can tell you that we need to go back a little bit to the regulatory history of Ant Group, which is the FinTech giants, that Jack Ma founded back in 2016. So Ant has operated in a regulatory minefield from the start because to a payment business, it also do lending, insurance, you know, investment, right. I mean, so over the years, the PBOC, the People's Bank of China has been keeping a very close eyes, close scrutiny on various business offhand. But as we talk about in the book right now, power is integrated in Chinese bureaucracy and having grown up on the Chinese soil and having been led by incredibly smart leadership, right. I mean, people like Jack knows how to maneuver this kind of

bureaucratic politics really well, right I mean, because the power ratification which is the Chinese style of checks and balances allow the company the opportunity to see for regulatory arbitrage, I mean that as we said you know, the authoritarian government has multipurpose policy goals. They want economic prosperity, they want you know social stability and they want nationalism, they want the national champions as well. I mean, so Ant is very good at exploiting those you know conflicting missions and objectives among different agencies and between different levels of government, right. I mean Alibaba and Ant obviously have very close relationship with the local government. So they tried to play this game, you know, leveraging this different levels of government and different agencies, different objectives to play with each other and I really see Ant as a success story because the company operate in such a difficult area, right. Ant has so much Western interests, but it was able to go that far, you know, until last October I mean so, but for all of this period Ant has been in a regulatory competition, it has been in a running competition with the regulators. So that's why I buy into the products in the kits up, right. Because Jack Ma would say, we have to run ahead of the regulator, we have to, otherwise we go nowhere right. I mean, so they keep innovating their products and this innovation, this financial innovation will not, you know does not fall within the realm of the existing regulation. Because they're new, right. I mean, and nobody knows and also it's not clear which regulators should have policy control over that product, let me give you an example, I've been, they have this called Xianghubao, which is a mutual aid insurance pilot, and Ant claimed that this is not an insurance. This is a mutual aid product, people just put in their money inside this pot and if somebody gets sick, they can take money from here, they can claim the money back. I mean, it's not insurance, but it does look like insurance. They're very... So there's always a regulatory lapse between, you know, when they create a product and when the regulator can finally catch up, right I mean, so and you know, if you look at it in the past five years, they keep innovating. They keep creating things and whenever they launch a product, overnight it become a sensational story. Like the next day becomes the largest spawn Like you're about becoming the largest investment fund in the world. Like, because Ali pay is so huge, right. I mean, so they can create a scale very quickly and they can innovate very quickly so the regulator was always like running behind the company. And even when Ant was going to file the IPO, not go back to when we already talk about why they can get the green light together IPO, because they take advantage of this intense relationship between the United States and China. They want to see, use this as an example to boost China's domestic stock market, I mean, but even if after they file the PBOC was still running , the PBOC was still trying to ring in, And particularly they have a worry about this, the lending business, because in the IPO perspectives, they saw, you know, vast majority of Ant's revenue derived from the lending business and from the micro loan lending business. But Ant has no skill in the game, in those spaces because 98% of the loans were



extended by the state banks, right. So right now, if you look at Ant balance sheet perfect, there's no default, you know the default rate is very low it's, I mean, balanced, it looks perfect right now It all looks fine, but there was a hidden risk, right. I mean, because that business model could potentially be tomorrow's hazard, which is the point, you know, American audience, very familiar with it back in 2008 subprime mortgage crisis, right. So the PBOC has perfectly legitimate concern over Ant and even, and had to file for IPO. The PBOC continued to press Ant with a lot of the regulatory rules, including, you know, you see back in September, the PBOC issued draft rules that indicate it will regulate Ant as a financial holding company, but you know, doing Ant's IPO roadshow and very aggressively promote itself as a tech firm. And that leads to a direct conflict between the regulator and Ant, maybe cause having a tech firms valuation is much, much higher than a financial company. And so that's why, you know, I guess behind the scenes to regulate Ant, has been pushing for full to push forward that draft rules to regulate Ants as a financial holding company, as you see now what's happening now. But that will have an effect on Ants stock prices but at that point when Ma made the speech, they have just the valuation already, and that is huge. Can be over 300 billion US dollars, right. I mean, so you can see the tension is always there, and it's not surprising that Ma was was not happy with the financial regulations and maybe that's the reason why he wants to watch this discontent in this very high profile offense. But obviously it also gave an opening for this regulator to bring in Jack Ma yeah. So the second question on Tencent, what's going to happen with Tencent, and firms like Bite Dance. Well, I mean, that goes back to the point of you know, the different policy objectives of the government, right. I mean, companies like Tencents, Bite Dance are national prize of the government, it's never in Chinese government's interests. to you know, sabotage these companies or undermine this companies. I mean, this companies will be tremendously important for China's economic growth and also to fulfill of kind of China's ambition as like a high tech leader, like this kind of supremacy in technology and think about, I see this kind of crackdown, I actually wrote another small piece. I see what can really result from this crackdown is like this company is full will be nudged towards a different direction because if you look at United States and China look at their big tech businesses, China is the only one that can foster tech giants, like the United States right now. But our tech firms, when we're talking about Alibaba, Tencents, Bite Dance this household name, they did not fry because of cutting edge innovations, like Huawei, they fry, because they are able to, you know, cater to the vast consumer markets. You know, we have very good with mobile payments FinTech and, you know, online communication and e-commerce. I mean, but these are not, you know, truly innovative, you know, like technology and not those that China desperately needs right now, is that, you see this tech firms like Tencent investing. in community group, which is squeezing the interest of the small and medium size, you know, grocery stores. I mean, this is not, if you stand in the

shoes of the government, this is not the kind of competition that we want. What the Chinese leadership want, which is the biggest elephant in the room is that, how do we close the gap in this technological vibrate with the United States? And we need more companies like Huawei. We need more companies that, you know, the Chinese government is saying, we need companies that really are truly innovative that invest in Fidesz Foundational Science and Technology, right. To close this gap and so if they look around, really, they can really count on this people because this firms, because they're cash rich, right. That mean they have tones of money. They have an army of talents. They have very sophisticated in software development already. So it's very natural for the government to count on this farm, to move towards those directions. And that's kind of intention is quite clear as you see, recently there was a people say the commentary saying, don't just focus on selling cabbage, focus in looking at the stars, aim have bigger ambitions and I think the government would have stronger urge to push this company towards that direction because the antitrust does get the government the leverage. I mean, because these are not state owned firms, for the government to discipline those companies, antitrust is an incredibly useful tool. And that tool is always overhanging over this company's head, right. Because there'll be also successful, right. I mean that your biggest vulnerability will be antitrust and the government can always go after you using the antitrust. Well, of course they've got to become Huawei, I mean, we're not going to use antitrust law over Huawei, right? So I think this firms will strive to become more innovative in the direction of the government desire as a form of self protection, but as to how efficient would that be? That's another question, right but you already see the company doing that, right. Even Tencent, have invested in hundreds of billions dollars in digital infrastructure, Alibaba having invested in the semiconductor and Baidu has invested heavily on driverless car and I think in the next few years, you should expect this companies to do more in those area. Yeah, okay

- Yeah, last question. I think that this, that you're, you're putting together just an amazing amount of information and we're grateful to you, but we realize we're probably taxing you quite a bit so the very last question is a very sort of antitrust question and it's about price fixing and who's adjudicating it. So the question is that vertical price fixing, as opposed to horizontal has been the subject of policy debate in the U S with more conservatives kind of arguing that vertical price fixing should not be subject to anti-monopoly regulation. In China there doesn't appear to be any sympathy with that viewpoint. And does that sound right to you?

- Oh yeah, our regulators love vertical price fixing, they love it in a sense, because these are the cases that are easy to go after. And to this day during the days of the NDRC, I mean, NDRC just like completely prioritized on doing this Appian cases precisely because, unlike cartels, which is far secretive is very difficult to gather

evidence RPM as though, you more or less have some complaints, you know, it's much easier to identify the evidence and unlike abuse, which takes, you know, exhausting amount of time to do the investigation and also do the market analysis. RPM, you know, when you find it, you'll see it. So, they supposedly show a much lower burden of proof in investigating those cases and actually form the major component of the enforcement efforts, for the first decade of the enforcement. and to this day, you continue to see, they continuously bring those cases in RPM. It's now as to how much it benefits consumers. That's another story because in those cases you always see, you know, as soon as the regulator get in they raise their hands, and then they offer to reduce prices, but how long they'll reduce the price. That's another question, how long that would last. And those cases rarely challenged in court. And it just kept a very convenient policy tool for the regulator to stabilize prices. And unfortunately misusing that direction going on to say... I think there was a question earlier about exit options of companies I mean, exit options of companies like Alibaba. I don't think companies like Alibaba is going to exit. I mean, in contrast to this kind of dire consequences that have been portray in the Western media, right. I mean, we have to bear in mind that this Chinese companies crawled up in China's unique political, economic institutions. They know how to adapt to this institutional environment very well. I mean, they have many ways that they can continue to, you know, find a room to grow, survive, even prosper in the Chinese economy. And so I'm quite optimistic about a resilience, right. I mean, we already talk about it, very one strategy that they employ, which is a regulatory arbitrage. And I think they will continue to explore that opportunity. I mean, not just among different agencies, but even among different areas of law, right. I mean, so you see Ant Group and Tencent have been asked to transfer data to the government, you know, government joint venture in order to, you know, and that will be, you know, will be a huge blow to the competitive advantage. But this tech firms were saying, you know, we can't just transfer data, to another firm because that will be violations of consumer privacy. So they're very smart, right. I mean, they're playing different laws against each other. And I would think that they will be proactively seeking for privacy regulation to regulate themselves to strengthen and entrench their own position. So yeah, I mean, there's a famous saying, that those that doesn't kill me, make me stronger. And I think that they might, they will emerge unscathed from this, for a larger extend and then they might even become stronger in the future.

- This has been amazing, we're lucky to have your voice in this, educating us, in this incredible time I mean, it's amazing to watch what's happening in China right now, and nobody knows more about these different agencies and what their purview are and what their fights are than you do. So I highly recommend, Angela Zhang's book and just please join me in thanking her for giving this talk on a bright early morning in Hong Kong and we're grateful to you. And so thank you very

much for joining us.

– Thank you very much Meg, it was a great pleasure to be here. Bye  
bye.