

CHINA'S CONSUMER SECTOR: THE POST-COVID LANDSCAPE

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Legal Briefings - By **Nanda Lau, Cathy Liu, Frances Xu, James Gong and Lucy Yao**

We outline the key post-Covid trends in China's consumer sector and assess the challenges facing retailers in the PRC

2020 was a challenging year for China, with the Covid-19 outbreak hitting its consumer and retail sectors hard early in the year. However, with effective lock-down and social distancing measures, the country has successfully curbed the spread of the virus and has led the world in economic recovery with a speed that has surprised many.

Looking forward, China's "dual circulation" policy, introduced in its 14th Five-Year Plan (2021-25), is expected to boost China's domestic consumption further and open more opportunities for both domestic and foreign companies. In this bulletin we outline some of the key post-Covid trends in China's consumer sector and the related legal and regulatory developments and challenges for doing business in China.

POST-COVID TRENDS

The pandemic has accelerated the reshape of China's consumer and retail landscape with the next new normal being formed.

Accelerated direct-to-consumer (D2C) strategies - Before Covid-19, companies had already started beefing up their digital and omni-channel capabilities in China. We expect this trend will continue at an accelerated pace in 2021, breaking down the silos between online and the traditional bricks and mortar retail businesses in order to ensure a smooth and seamless customer experience, both offline and online.

Boosted use of social commerce – Innovative digital engagement models, such as live stream videos via online platforms like TikTok or Tmall, are increasingly being deployed to promote products and services. WeChat also provides a number of in-app commerce functionalities enabling direct business-to-consumer (**B2C**) interaction through micro-stores set up by retailers within the app, allowing users to make a variety of social media-driven purchases. Brand reputation is established more through word of mouth from key influencers or between consumers.

Investment in and use of emerging digital technologies – Companies are investing in and using digital technologies such as artificial intelligence (**AI**), augmented reality (**AR**), virtual reality (**VR**) and digital marketing technologies to find target consumers and enhance their shopping experience. Location of Things (**LoT**) applications which can identify and/or track individuals as they move around their environment (be it at home, in the car or walking along a high street) are being adopted for sophisticated exploitation of contextual commerce opportunities.

Increased foreign investment into China's consumer and retail sectors – In 2020, China attracted more foreign direct investment than any other country, exceeding the US for the first time. We anticipate that this will continue in 2021 with more foreign capital expected to flow into the China consumer space. This is in light of the Chinese government's policy to promote domestic consumption and the strong demand created by the country's ever-growing middle class with an increasing desire for quality products and services.

THE EVOLVING LEGAL AND REGULATORY ENVIRONMENT

Echoing the fast pace of innovation and transformation in the consumer and retail sectors, the legal and regulatory environment in China has been rapidly evolving in response to the many challenging issues brought about by new technologies, new business models and new practices.

DATA AND CYBER SECURITY

Two milestone pieces of legislation, the draft Personal Information Protection Law (**PIPL**) and the draft Data Security Law, started their legislative process in 2020. Important standards on personal information protection and risk assessment were also updated or released. 2021 is likely to see the two milestone laws being enacted, both of which mandate a range of compliance measures. In addition, China is expected to publish a series of implementing rules and standards to supplement the emerging regulatory framework, which will present additional compliance challenges for many companies.

We expect to see an increase in civil cases being brought under the Civil Code for infringement of personal information. If the PIPL is enacted in 2021, there will also be an increase in public interest litigation under it. Consumer and retail sector companies usually process a large volume of personal information, and should prepare themselves for the new laws and compliance challenges.

Continuous regulatory efforts have been made to supplement technical standards in order to progress establishing the multi-level protection scheme (**MLPS**) in China. Local police have been taking a more active approach to inspecting companies on their compliance with the MLPS regime, including reviewing consumer goods companies that host large amounts of personal data. Now that the framework for MPLS standards has been established, this has cleared the obstacles preventing large-scale implementation of the scheme. Consumer sector companies should be alert to this and start implementing MLPS for their network systems.

COMPETITION

With the fast growth of digital technologies, authorities in China are more strictly enforcing competition law on e-commerce businesses. In the national agenda for the economy released in December 2020, strengthening antitrust was highlighted for the first time as one of the key economic objectives for the country in the coming year. The antitrust regime is seen as an intrinsic requirement for promoting the quality development of the economy. There is a current focus on antitrust enforcement in relation to digital platforms, including enforcement against new forms of conduct prevalent in the digital sector (such as using data analytics to engage in discriminatory or predatory pricing). In April 2021, a tech giant was fined CNY 18 billion for abusing its dominant position by requiring merchants to agree not to use other platforms. Similarly, an online food delivery platform was also fined for requiring its in-platform vendors to deal with it exclusively.

Throughout 2020, China's antitrust regulator, intensified its efforts to upgrade its regulatory toolkit. It published a number of key guidelines relating to the enforcement of the Anti-Monopoly Law covering areas such as intellectual property rights and automotives, as well as other aspects such as leniency and commitment procedures. These guidelines provide welcome certainty and clarity for both domestic and foreign companies operating in China on a number of key aspects of the competition law regime.

Companies in the consumer and retail sectors should be prepared for stricter antitrust scrutiny. The Standing Committee of the National People's Congress has prioritised amending the Anti-Monopoly Law as part of the legislative agenda for 2021. We expect that liabilities for antitrust infringements will be increased, such as the proposed penalty of up to 10% of turnover for gun-jumping. Also, the antitrust regulator is likely to have increased enforcement powers and capabilities across a broad range of sectors, including consumer and retail.

ADVERTISING AND CONSUMER PROTECTION

As a response to lockdowns and restrictions on travel, livestreaming e-commerce developed rapidly in 2020. It is estimated to already account for US\$60 billion in sales annually. Last year over 560 million people, about 39% of China's population, viewed livestreams. Sales from live streams more than doubled in 2020 and accounted for almost 9% of all online retail sales.

Various laws, regulations and industry policies have been enacted to regulate livestreaming e-commerce activities. These include the Regulations on Promotion Activities of Livestream (June 2020), Regulations on Services in relation to Public Account of Internet Users (February 2021), Guiding Opinions on Administration of Livestream (February 2021) and the Notice on Enhance the Supervision on Livestream Promotion Activities (February 2021).

An increasing number of law-enforcement agencies are involved in regulating livestreaming e-commerce. The Administration of Market Regulation (**AMR**) and the Public Security Bureau (**PSB**) are the two major regulators, with the Advertising Law and the Public Security Administration Punishment Law being most frequently cited as the legal basis for their ability to impose administrative punishment. In addition, the Cyberspace Administration of China (**CAC**), the Ministry of Industry and Information Technology (**MIIT**), the Ministry of Culture and Tourism, and the National Radio and Television Administration have recently all been very active in regulating and supervising the livestreaming industry from different angles.

Consumer protection remains the key focus of enforcement agencies. Most of the investigations target issues such as product quality issues, misleading claims made by influencers and opinion leaders or fabricated sales data or hits. The law-enforcement agencies have also started to enhance their supervision of activities of the livestreaming platforms, influencers and multi-channel networks.

FOREIGN INVESTMENT AND M&A

Following implementation of the new foreign investment law in 2020, China has released new rules encouraging foreign investment in, among others, cross-border e-commerce, tourism and other modern service industries. Foreign exchange controls have also been further liberalised, offering foreign investors more funding alternatives for investments and businesses in China. In addition, China continues its efforts to optimise its business environment by pushing forward nationwide reforms. All these would help boost foreign investors' interest in the consumer sector generally.

The pandemic has seen an acceleration of trends such as digitalisation, direct-to-consumer sales, convergence of technology with in-store experience and contactless delivery. This has led to a rise in partnerships and collaborations between businesses, particularly those with online platforms. Boosting digital capabilities, strengthening core operations, broadening offerings and increasing exposure to promising market segments would be dominant drivers of deals in 2021 in the consumer sector.

Also, we expect that there will be further consolidation within the retail sector. The decline in recent years of traditional bricks and mortar retail businesses, further accelerated by the Covid-19 pandemic, looks set to continue at pace. Online marketplaces are emerging as winners, supported by an increasing number of digitally savvy consumers that come to marketplaces to seek solutions (rather than for specific brands). We anticipate significant industry consolidation, leading to increased levels of M&A, as traditional high street retailers struggle.

As the post-Covid new normal emerges, companies are getting closer to consumers and have more opportunities to access and use increasingly insightful information about them. In order to achieve competitiveness in the market, companies are also increasingly investing in digital channels and technologies for more effective marketing of their products and services and better customer experiences. From a legal and regulatory point of view, the law is still very much playing catch up with the technological advancements and changing business models. However, we have seen an overall speeding-up of the reform process and, in the near future, are likely to see a range of new legislation and enforcement actions across various areas being taken in China's consumer and retail sectors. Companies are advised to closely follow these developments to understand the changing regulatory landscape and enforcement focus and factor them in to strategic plans and daily operations.

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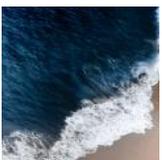


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