E-COMMERCE AND ITS HIDDEN DRAGONS IN CHINA: 
BENEFITS, RISKS AND OPPORTUNITIES FOR THE 
GOVERNMENT AND FOREIGN INVESTORS

A THESIS

SUBMITTED TO THE

STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES

AT THE STANFORD LAW SCHOOL

STANFORD UNIVERSITY

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR THE DEGREE OF JURIDICAL SCIENCES MASTER

BY

Jianjun (Jenny) Zhou

MAY 2001
ABSTRACT

Along with rapid development of the Internet, e-commerce has witnessed equally significant growth in China. Already an important part of the economy, e-commerce is transforming China into an information-based society. It will have a huge impact on, and bring new development opportunities for all economic operations. The Chinese government has realized the importance of e-commerce and pushed for wider acceptance of information technologies, popularize the use of computers, and intensify the development of information resources.

Large amounts of foreign investment have poured into China since 1979, especially in China’s information industry during the last two years and the momentum has been further accelerated by the lucrative market prospects anticipated after China’s accession to the World Trade Organization. All new development brings benefits, risks and opportunities to the Chinese government, foreign investors and domestic enterprises. How can China use the opportunities brought by the Internet to reform or restructure the present economic and legal systems? How to balance the interests of all the players and how to protect national economy and in the mean time make good use of foreign investment are challenges for the Chinese government. The thesis explores the government dilemma of “love and hate” attitudes towards the Internet. Furthermore, the thesis provides some policy recommendations to solve the problems by concluding with proposals on further liberalization and deregulation of Chinese economy, adjustment of the role of government and ultimate adoption of rule of law. The purpose of this thesis is to provide suggestions to legislators and to contribute to the work of scholars.
Table of Contents

INTRODUCTION ............................................................................................................... 1

1. CURRENT REGULATORY ENVIRONMENT: CONTROL AND CONFUSION
   ................................................................................................................................. 6
   1.1 Existing Regulation of E-Commerce ................................................................. 6
   1.2 Regulatory Agencies in China and Their Conflicts ....................................... 21
       1.2.1 Main government agencies in e-commerce regulation .......................... 21
       1.2.2 Overlapping government departments ............................................... 23
       1.2.3 Conflicts between central and local government ............................... 26

2. CHINESE GOVERNMENT E-COMMERCE POLICIES: RAPID CHANGE AND CONFLICT ........................................................................................................ 29
   2.1 Government Control and Effects on E-commerce ........................................ 29
       2.1.1 Reasons for government control policy .................................................. 30
       2.1.2 Effects of Controls .................................................................................. 32
   2.2 Encouragement of E-commerce ..................................................................... 33
       2.2.1 Reasons for Encouragement ................................................................. 33
       2.2.2 Facts Regarding Encouragement of E-commerce ............................... 35
   2.3 China’s E-Commerce Framework ................................................................ 39

3. FOREIGN DIRECT INVESTMENT IN E-COMMERCE IN CHINA .. 46
   3.1 Growth of Foreign Direct Investment in China ............................................. 46
3.2 Government Control of Foreign Investment in China’s E-commerce .......... 47
3.3 Foreign Investment in China’s Telecommunications Sector ..................... 55
  3.3.1 Regulations: Ambiguous and Frequent Changes ................................. 56
  3.3.2 “Secret” Launches of Foreign Investors .............................................. 59
3.4 Obstacles for Foreign Investors in E-commerce ........................................ 65
  3.4.1 Obstacles in Infrastructure ............................................................... 65
  3.4.2 Institutional Problems ...................................................................... 68
  3.4.4 Limited Exit Mechanisms ................................................................. 75
3.5 Market Opportunities for Foreign Investors in Chinese E-commerce .......... 81

4. WTO ACCESSION AND FUTURE REFORM ........................................... 85
  4.1 China’s Commitments to the WTO in the Telecom Sector ....................... 86
  4.2 Impact of WTO on Foreign Investment in China’s Telecom Industry ........ 90
  4.3 Recent Policy Adjustments .................................................................. 99
  4.4 Policy Proposal .................................................................................. 102
    4.4.1 Liberalization and Deregulation ....................................................... 102
    4.4.2 Adjustment of the role of government ............................................. 103
    4.4.3 Transparency and Rule of Law ........................................................ 105

APPENDIX A: CHINA’S E-COMMERCE READINESS ................................. 113
APPENDIX B: MAJOR GOVERNMENT AGENCIES INVOLVED IN E-
COMMERCE .................................................................................................. 114
APPENDIX C: CHINA’S INTERNET-RELATED LEGISLATION AND
LEGAL LEGISLATIVE COMMENTS ................................................................ 115