



China

Monthly Anti-Trust Report

March 2014

Due to the general nature of its contents,

This newsletter is not and should not be regarded as legal advice.

For any questions please contact T&D Associates at:

21st Floor, Times Fortune

Shuguang Xili Jia 6, Chaoyang District,

Beijing 100028, People's Republic of China

Telephone: (8610) 58678228 Facsimile: (8610) 58678227

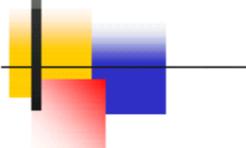


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LEGISLATION

MOFCOM Held an Internal Meeting for Feedback on Simplified Procedures

March 17, 2014

On March 17, 2014, the Anti-Monopoly Bureau (“AMB”) of the Ministry of Commerce of the People’s Republic of China’s (“MOFCOM”) held an internal meeting in order to get feedbacks from law firms practicing in China on simplified procedures. Mr. Shang Ming, the Director General of the AMB, and officials from the Consultation Division, the Legal Division, the Economic Division, and the Competition Policy Division of the AMB attended this meeting.

According to MOFCOM, they are now formulating the *Guidance on Notifications for Simplified Cases of Concentration of Undertakings* (“**Guidance**”) which includes supporting procedure rules for the “*Interim Provisions on Standards for Application of the Simplified Cases of Concentration of Undertakings*” (“**Provisions**”) issued on February 11, 2014. The “Provisions” will not be formally implemented until the Guidance takes effect.

Please see the summary of the Guidance as follows:

Application

First, before filing with MOFCOM, the notifying party will need to work with its counsel to determine whether the proposed transaction meets the criteria for a simplified case in accordance with the Provisions, and whether or not they should apply for the simplified procedure. As far as we know, the notifying party is required to formally specify whether it deems the proposed transaction a simplified case and use the Notification Form for Simplified Cases.

Review and Initiation

After receiving the application for a simplified procedure in the notification form, MOFCOM will preliminarily review the application based on the “Provisions”. If the transaction satisfies any of the conditions in Article 2 of the Provisions, MOFCOM will officially initiate the case as a simplified case, and will release a public notice within ten calendar days seeking comments from the public regarding the application for simplified procedures. There is no “stop the clock” in MOFCOM’s practices, and the 10-day period for public comments will be included in Phase 1.

Approval or Withdrawal

If any third party thinks the proposed transaction should not be determined as a simplified case and provides sufficient evidence after the determination is made by the AMB, or the AMB itself finds the case does not meet the criteria in the “Provisions” during its review, AMB will withdraw its determination of simplified case. In that case, the notifying party needs to re-submit the notification to MOFCOM and go through the whole standard procedure for review of concentrations between undertakings for a normal case.

Based on the above, the notifying party should consider the possible effect of MOFCOM releasing information on the proposed transaction to the public and carefully choose whether to apply for the simplified procedure.

MOFCOM Publicized the Anti-monopoly Simplified Procedure

March 5, 2014

With MOFCOM’s promulgation of legislation to supplement the *Anti-Monopoly Law*, the *Interim Provisions on Standards for Application of the Simplified Cases of Concentration of Undertakings* (“**Provisions**”) was implemented on February 12, 2014.

In anti-monopoly law enforcement work, the number of Concentrations of Undertakings cases reviewed by MOFCOM has grown rapidly since 2008. By the end of 2013, MOFCOM received a total of 886 declarations of concentrations of undertakings, among which 797 cases have been initiated and 740 cases have been concluded. In the cases that have been concluded there are 717 unconditionally approval cases (about 97%), 22 conditionally approved cases, and 1 prohibited case (these two kinds of cases account for about 3%.) Economists evaluated that the expertise, containment and openness of the anti-monopoly law enforcement work of MOFCOM has continually improved for more than half a decade.

4 simplified cases and 2 protection mechanisms

MOFCOM's Information office recently convened a special press conference on its anti-monopoly work. Shang Ming, Director General of the Anti-Monopoly Bureau of MFOCOM, said that the purpose of formulating the “Provisions” includes two aspects: to improve the efficiency of law enforcement and to lighten the burden on enterprises. He also said, ‘Law enforcement practice in the past five years proves that most of the cases did not damage competition and only a few cases really had problems. The unconditionally approved cases accounted for 97% of the total, and cases that imposed additional restrictive conditions and prohibited cases collectively account for only 3%. Given this situation, the supporting anti-monopoly legislative work for simplified procedures was launched to improve efficiency and lighten the burden on

enterprises.

According to the new regulations, the simplified cases are grouped into four categories by AMB and the applicable standards are as follows:

(1) Horizontal Transaction: The total market share of a concentration of undertakings is less than 15% in the same relevant market.

(2) Vertical Transaction: The transaction parties are in upstream and downstream markets separately instead of in the same relevant market. And market share of each undertaking shall be less than 25%, no matter which markets are involved.

(3) Conglomerate Transaction: This is neither a horizontal nor a vertical transaction. For example, it's a kind of neighboring relationship between transaction parties. In these circumstances, the market share of each concentration of undertakings shall be less than 25% in any markets involved.

(4) Special Transaction: If the joint venture is established outside China and has no business in China; .transactions among different shareholders of the same joint venture and the transaction leads to independent control from joint control of two or more controllers.

In order to guarantee the effective implementation of the standards for applications of the simplified cases and prevent possible negative impacts, MOFCOM also stipulated two protection mechanisms that defined 6 kinds of exceptions and 3 kinds of transitions.

The level of law enforcement is continuously improving

The number of cases reviewed by MOFCOM increased slightly in 2013 compared with previous years. MOFCOM received 224 cases of declarations of Concentrations of Undertakings (year-on-year growth of 8%), among which 212 cases were initiated (year-on-year growth of 12.8%) and 207 cases were concluded (year-on-year growth of 26%). There are 4 conditionally approval cases of the cases that have been concluded.

Yao Jian, the press spokesman for MOFCOM, said that MOFCOM has done a lot of work in many aspects such as institution-building, supporting legislation, case review, education and training, and international communication in more than 5 years after the implementation of the *Anti-Monopoly Law*. MOFCOM has established a specialized law enforcement team and preliminarily established the review system for the anti-monopoly review of concentrations of undertakings, properly handled the grave and complicated cases of concentrations of undertakings, energetically cultivated various aspects of the whole society's legal awareness towards competition, and

drawn lessons from international successful experiences through improving international cooperation.

Wu Hanhong, Professor at Renmin University of China, said that considering China's anti-monopoly review on merger and acquisition started relatively late, and considering that professional knowledge, personnel, and resources are insufficient, the AMB of MOFCOM actively studies relevant economic theory and officials work very hard. He said, 'Looking back on the past five years of anti-monopoly review on concentrations of undertakings, we can see the expertise of the AMB of MOFCOM is improving gradually. At first, there was not much information released by MOFCOM during the review process of the acquisition of Huiyuan by Coca-Cola. However, with the improvement of law enforcement, the Anti-Monopoly Bureau of MOFCOM reached a certain level in terms of expertise, rationality and logic. The length of competitive analysis in the review determination can now reach six or seven pages. This is a huge step.'

He also pointed out that the anti-monopoly law enforcement work of MOFCOM was very inclusive and open, and MOFCOM also created some working methods with Chinese characteristics.

AUTHORITY

Director General of Anti-Monopoly Bureau of NDRC: the Monopoly Cases Investigated may Increase This Year

March 24, 2014

In recent years, China's authority for enforcement of the Anti-Monopoly Law has investigated monopolistic conduct in many fields in order to safeguard market competition order. In China, the concept of 'Anti-Monopoly' has been transformed from a relatively abstract vocabulary to having many precedential cases which are well-known to the public.

From large state owned enterprises such as Unicom and China Telecom to foreign enterprises of LCD panels, such as Samsung, to high-end Liquor enterprises such as Maotai and Wuliangye, to the foreign milk powder enterprises such as Mead Johnson and Abbott, all classic anti-monopoly cases are efforts made by the Price Supervision and Inspection and Anti-Monopoly Bureau of the National Development and Reform Commission ("NDRC") in anti-monopoly law enforcement.

Xu Kunlin, the Director General of Price Supervision and Inspection and the Anti-Monopoly Bureau of the NDRC, accepted an exclusive interview with reporters from China News recently. He interpreted the hot issues of China's anti-monopoly enforcement and disclosed the future trend of anti-monopoly law enforcement of NDRC.

Late Start but Quick Progress, Personnel Expansion Needed in Future

While in Europe and America it took ten years from the publication of legislation to the first case of law enforcement, it's just the fifth anniversary of the implementation of China's Anti-Monopoly Law, and the number of cases of China's anti-monopoly law enforcement saw explosive growth in 2013. It's worth noting that the Department of Price Supervision and Inspection changed its name to the Price Supervision and Inspection and Anti-Monopoly Bureau of the NDRC approved by the central authorities in July 2011. The bureau set up three divisions specializing in anti-price monopoly.

The authority for enforcement of the Anti-monopoly Law of the NDRC quickly adapted to its role, although it had not been established for long. Xu Kunlin introduced that the China's anti-monopoly law enforcement was in the stage of preparation in previous years, including researching and implementing some regulations, giving detailed information about the *Anti-Monopoly Law* and preparing the law enforcement force by expanding authorized strength and personnel training.

He pointed out that anti-monopoly law enforcement only can be launched after a series of preparations have been made. ‘Therefore, the number of cases has increased sharply since 2013. It is estimated that the number of cases will increase in 2014.’

With respect to the investigation process of price-monopoly cases, Xu Kunlin introduced that the activities of investigation and law enforcement include multiple steps, such as collecting evidence, investigating, studying and handling, and deciding on a punishment. The investigation and evidence collection is the most critical step. ‘Because some evidence is buried deep and you have to dig it out. Sometimes the undertakings resist the investigation. So it is a very critical step to smoothly obtain crucial evidence’.

With the increasingly extensive areas of anti-monopoly law enforcement and more complex background for law enforcement, the requirements for the anti-monopoly law enforcement team increase. Although China's Anti-Monopoly law enforcement force and experience has improved in the past several years, Xu Kunlin said frankly, China's anti-monopoly law enforcement is still in the preliminary stages, and is understaffed. ‘The development of anti-monopoly work in the future requires the enhancement of this team. So it is inevitable that we must expand personnel.’

With respect to the industry news about the combination of the NDRC, MOFCOM, and SAIC (three authorities for enforcement of the *Anti-Monopoly Law*), Xu Kunlin said that three authorities have clear boundaries and are responsible for different matters at present. However, they will work together towards establishing a relatively independent law enforcement agency with an independent authority.

Continuous Attention on the Internet and the Rising Price-Monopoly on Taxi Software will be investigated.

In addition to traditional industries, the anti-price monopoly work of the NDRC has extended to the emerging Internet field.

Xu Kunlin said that the authority for enforcement of the *Anti-Monopoly Law* paid attention to competition between e-commerce enterprises and internet taxi software. He emphasized that, if the result of the competition is to defeat the competitors and monopolize the market, the law enforcement authority will track the subsequent developments. “If they dump at a low price to defeat their competitors and then raise prices to damage the interests of consumers, the anti-monopoly authorities will conduct an investigation and implement sanctions.”

Xu Kunlin emphasized that the law enforcement authority doesn't object the monopoly position of Internet enterprises, but will resolutely investigate and punish them if they abuse their dominant market positions to seek improper interests.

Xu Kunlin disclosed that they also paid a lot of attention to the price war between e-commerce enterprises. ‘With respect to the price war between some e-commerce enterprises in the previous two years, we punished their behavior of fabricating original prices and making false publicity because the behavior is suspected of involving price fraud and promise breaking. We will continue to pay attention to the price war’.

Xu Kunlin disclosed that some e-commerce enterprises, in fact, have been punished by the price regulation authority more than once. The law enforcement authority encourages the enterprises, including Internet enterprises, to conduct reasonable competition within the limits prescribed by law. However, the enterprises shall not engage in price fraud.

Law Enforcement Preferentially Leans towards the Field of People’s Livelihood, Welcoming the Public to Report Suspected Breaches of the Law

Xu Kunlin expressed that concerning the role of anti-monopoly to the common people, no matter direct or indirect, enforcement of the anti-monopoly law shall benefit the common people.

He expressed that enforcement of the anti-monopoly law can restore competition order. Some prices may decrease and being directly influenced by this enforcement. Some would be relatively indirect, such as anti-monopoly in the manufacturing field being transmitted to the consumption field. There would be a process. There are still some that rely upon the recovery of competition order, and then competition among enterprises shall urge it to improve management, innovate technology and service quality, finally prompting a decrease in price. The common people can benefit from the improvement of service quality and product quality as well as the decrease of prices, but there must be a process.

Xu Kunlin expressed that in numerous anti-monopoly cases, the matters involving people’s livelihood are the focus of law enforcement agencies, and investigation in this regard would also be emphasized. He introduced that the purpose of price supervision is to maintain normal price order, prevent abnormal price fluctuation, and eliminate other abnormal factors.

“For instance, some enterprises increase the price by virtue of temporary shortage, including disaster, to inconvenience the consumer. Some seek monopoly benefits by virtue of advantageous position in market competition, and this behavior also damages consumers”. Xu Kunlin pointed out that price supervision's intent is to maintain normal competition order, and sufficiently exert the decisive role of the market, “the government should take prompt measures, which is also one embodiment of better exerting the government’s role”.

Xu Kunlin pointed out that the government authority is constructing one handle platform of price issues named “12358”, and such a platform welcomes consumers to report price problems to law enforcement agencies via multiple channels such as network and telephone, and “it is also one important technique for us to discover cases”.

Consistent Domestic and Foreign Anti-monopoly Standards, Preparing for Responding to Lawsuits

From LCD panel manufacturers such as Samsung, to numerous foreign milk powder brands, to foreign enterprises in communication field such as Qualcomm, large numbers of cases in anti-monopoly law enforcement of the Anti-monopoly Bureau of NDRC in recent years were related to foreign enterprises, while anti-monopoly law enforcement in China also won the concern of the world.

While praising China for supporting competition and creating space for market forces to exert a decisive role, some foreign media also worry that China’s anti-monopoly law enforcement would influence the investment environment for foreign enterprises in China.

In this regard, Xu Kunlin reiterated that China’s anti-monopoly enforcement would not distinguish the nature of enterprises. No matter whether they are domestic enterprises, foreign enterprises, state-owned enterprises or private enterprises, as long as something violates *the Anti-Monopoly Law*, it will be investigated.

He expressed that cases in 2013 also demonstrated this point, “among enterprises that we punished, there were overseas enterprises, foreign-funded enterprises, and also domestically well-known state-owned enterprises”. So it shows that there are no such problems or differences in treatment of enterprises with different backgrounds.

“Some punished domestic enterprises sometimes ask why you do not punish overseas enterprises. Maybe you do not dare to punish overseas enterprises. When we punish overseas enterprises, they would say you are protecting the domestic enterprises? So it would seem a bit partial from these perspectives.” Xu Kunlin emphasized that all anti-monopoly investigations are still based on whether there are laws being broken

He said that the market position of a certain enterprise is decided based on various characteristics. The authority cares about whether or not its behaviors eliminate competition after gaining market position. If they do not violate the *Anti-Monopoly Law*, normal operations of the companies shall be protected.

Not long ago, the Intellectual Property Office of China (“**IPO**”) responded to a lawsuit from Apply. In terms of the questions about future enterprise lawsuits against

the antitrust authority, Xu Kunlin said that it was normal for them to encounter lawsuits during law enforcement work. Since the investigated companies have the right to apply for administrative reconsideration or file lawsuit pursuant to laws and regulations, the relevant authority will respond accordingly.

He stated that, although they had not meet with administrative reconsideration or an administrative lawsuit as of yet, it is normal that they meet with such conditions afterwards, "If it happens, we will deal with it according to the specific situation."

MOFCOM: the Determination of Administrative Sanctions to be used against Illegal Concentrations of Undertakings

March 20, 2014

In order to improve the administrative transparency of law enforcement, after May 1st, 2014, MOFCOM will, according to regulations, begin to declare initiated concentrations of undertakings cases without legal notification and publish determined administrative sanctions on MOFCOM's website for public access. At the same time, the fax number (8610-65198998) will be set up to allow any company or individual to inform MOFCOM about suspected illegal notifications for concentrations of undertakings.

According to the *Anti-Monopoly Law* and the *Provisions of the State Council on Thresholds for Prior Notification of Concentrations of Undertakings*, if the undertakings meet the threshold for notifying a concentration of undertakings, they must notify their concentration in advance. Such concentrations without notification shall be prohibited. After the *Anti-Monopoly Law* and the provisions were implemented, an overwhelming majority of undertakings fulfilled the notification requirements, but there were still some who failed to meet the requirements. Because of this, on February 1, 2012, MOFCOM implemented the *Interim Handling Methods on Illegally Notification for Concentration of Undertakings*, for the purpose of strengthening investigation procedures against illegal concentrations of undertakings. In order to better investigate illegal concentrations of undertakings, MOFCOM's next steps will be to continue strict law enforcement, earnestly safeguard parties, informants' and third parties' legal rights and interests, make legal, reasonable, objective and fair decisions, prevent and stop monopoly behavior, protect market competition order, continue to protect interests of consumers and society and promote the development of socialist market economy.

SAIC: Symposium on China and EU Competition Policy Week is Held in Beijing

March 14, 2014

On March 13 and 14, 2014, the State Administration of Industry and Commerce (“SAIC”) and Competition Department of European Commission jointly held the “China and EU Competition Policy Week - Symposium on the Basic Contents and Principles of Anti-monopoly Law Enforcement” in Beijing. Principals and officials of anti-monopoly law enforcement institutions from the industry and commerce departments from 31 provinces, districts and cities participated in the symposium.

This symposium was the 7th symposium held by SAIC and the Competition Department of the European Commission under the platform of the China-EU World Trade Project (Second Stage). During the symposium, officials from the Competition Department of the European Commission, the Swedish Competition Agency, the Germany Competition Agency, the Anti-monopoly and the Fair Competition Enforcement Bureau of SAIC as well as specially invited experts and consultants of China-EU World Trade Project (Second Stage) conducted an in-depth and detailed introduction on topics including the investigation technology used in investigating monopoly cases, methods for collecting and processing information, evidence evaluation, investigation procedure and implementing verdicts under respective jurisdictions.

Representatives presented at the symposium and China and EU experts had a lot of discussions with Chinese and foreign anti-monopoly experts concerning concrete problems encountered during law enforcement activities, such as the application range of a dawn strike, treatment of professional informers who make complaints without substantial evidence, application of the reconciliation and leniency system, and reversion of burden of proof. By virtue of this symposium, the understanding of representatives on anti-monopoly enforcement procedures of the EU and its member countries was further deepened, especially special system and investigation measures such as leniency, commitment, reconciliation, and dawn strikes for anti-monopoly law. It also referenced the significance of effectively conducting an investigation for the industry and commerce authorities.

In the future, the SAIC shall systematically organize enforcement backbones of industry and commerce systems to carry out face-to-face discussion and communication with officials of overseas competition agencies concerning the difficult issues in anti-monopoly work as per work arrangement. In addition, it shall actively expand the vision of competition enforcement teams, vigorously improving enforcement levels, and promoting the depth and breadth of anti-done by the industry and commerce authority.

NDRC: Opening Ceremony of the Bureau of Price Supervision and Inspection and Anti-Monopoly in Hainan Province

February 28, 2014

The opening ceremony of the Bureau of Price Supervision and Inspection and Anti-monopoly in Hainan Province was held in Haikou, Hainan on Feb 28, 2014. The founding of the first official anti-monopoly law enforcement institution in Hainan Province has far-reaching significance for government price competent departments at various levels charged with carrying out and implementing the spirit of the Third Plenary Session of the 18th Central Committee of the CPC, accelerating and perfecting the modern market system, and strengthening the function of government market supervision.

It is reported that last October, for further strengthening market price supervision and anti-monopoly work, Hainan Province approved the creation of the Hainan Price Supervision and Inspection Bureau directly under the Hainan Price Bureau to change its name to the Hainan Bureau of Price Supervision and Inspection and Anti-monopoly after being approved, and it will be the anti-monopoly investigation section that will take charge of organizing, investigating, recognizing and punishing illegal price acts such as price fraud, price monopoly, increasing prices, low-price dumping and seeking exorbitant profits.

MOFCOM: Director General Shang Ming Meets with Representatives of Omnicom Group

February 28, 2014

On Feb 28, 2014, Director General Shang Ming met with Serge Dumont, the president of the Asia-Pacific Region at Omnicom, and his delegation. They exchanged ideas concerning the issues of anti-monopoly law enforcement.

SAIC Held Video and Telephone Conference of Competition Law Enforcement and Direct Selling Supervision Work of National Industry and Commerce System

February 26, 2014

On Feb 26, 2014, the video and telephone conference of competition law enforcement and direct selling supervision work of the national industry and commerce system was held. Song Hongzhi -- Deputy Director General of SAIC, reviewed and summarized the work condition for competition enforcement and economic inspection in 2013, direct selling supervision and cracking down on pyramid selling, and described the main goals for 2014. Song Hongzhi reiterated that companies need to adapt to the new

situation and new requirements, there needs to be innovation related to supervision concepts, enhancement of enforcement strength, and there should be a creation of a fair competition market environment so as to make a positive contribution to comprehensively deepening reform.

Song Hongzhi pointed out that the national industry and commerce system in 2013 closely focused on prominent problems which concerned the masses and society, and feasibly maintained uniform, open and fair competition market order. In addition, the anti-monopoly law enforcement work was solidly promoted, unfair competition work achieved new breakthroughs, economic inspection continued developing, direct selling supervision and cracking down on pyramid selling achieved obvious results, and the quality of the enforcement team continuously improved. Various work achieved new results.

Song Hongzhi emphasized that the industry and commerce authorities at various levels should firmly master new situations and new requirements in 2014, unifying ideological understanding with deployment decisions of the Central Committee of the CPC, further improving understanding of the importance and urgency of market supervision law enforcement work, and fully understanding that strengthening market supervision work is a comprehensive reform and strong guarantee for the market to exert a decisive role in resource allocation. In addition, it is a requirement for maintaining the fundamental interest of the masses and promoting social harmony and stability. This is an important piece in accelerating and promoting the functional transformation of industry and commerce, and promoting industry and commerce reform and development. Moreover, the industry and commerce authorities at various levels should strengthen their sense of responsibility and mission, dare to enforce the law, comprehensively strengthen competition law enforcement, strictly crack down on pyramid selling and standardize direct selling, and vigorously create a fair competition market environment.

Targeting the implementation of key work in market supervision and law enforcement, Sun Hongzhi emphasized that damaging market behavior in competition order and monopoly cases has a big influence on the economy and society, and should be vigorously investigated and handled. In addition, it should hold on to hot issues in market competition, strengthening the investigation and handling and strengthening various kinds of improper competition in traditional fields, the Internet field, etc. Moreover, taking the rectification of pyramid selling in key areas as a breakthrough and creating a “no pyramid selling city” as a carrier, it should crack down on pyramid selling, using the construction of direct selling supervision systems as a key, which will strengthen market supervision and law enforcement on direct selling.

Sun Hongzhi also emphasized that the industry and commerce authorities at various levels should strengthen the foundation on supervision and law enforcement, accelerate the perfection of laws and regulations, strengthen the construction of the

law enforcement system and law enforcement information, and further strengthen the basic theoretical research on law enforcement. In addition, the construction on specialized law enforcement team should be strengthened, effective training and application approach to systematic enforcement should be actively explored, and the planning and systematic nature for cultivating enforcement talents should be strengthened. Moreover, diligent and incorrupt government ideological education for law enforcement personnel should be further strengthened, enabling law enforcement personnel to fully understand the importance of administration by law and strengthen risk prevention and control on law enforcement work.

CASES

Advertisements for the China Wedding Expo Being Investigated for Suspected Unfair Competition

March 10, 2014

Reports of “Unbelievable Prizes,” Including Vehicles, TVs, etc. in Yangtze River Business Daily Violating Relevant Regulations

Recently, the China (Wuhan) Wedding Expo, which claimed that it had been approved by MOFCOM and the Ministry of Civil Affairs and SAIC conducted a large number of promotional activities in Wuhan. The ads, which were posted in elevators in many business buildings in Wuhan with “unbelievable prizes” that included 2 vehicles, 50 Ipad minis, 100 color TVs, 100 refrigerators, and 100 washing machines, fully attracting public attention. Yesterday, some citizens doubted that the grand prize of over RMB 5,000 Yuan set up by the organizer of the China wedding expo complied with fair competition regulations, and advised industrial and commercial authorities to investigate this matter.

The Real Amount of the “Unbelievable Prize” was far more than RMB 5,000 Yuan

Yesterday, in the citizen’s report, reporters saw that the ads for the China wedding expo were hung up in the elevators of many office buildings in Hongshan District in Wuhan City. Other than the content of the expo, the ads also showed big prizes including a Chevrolet car, a large screen color TV, roller washing machines, etc. in large graphics. We can also find these ads on the official website of the China wedding expo.

We could not find the brand, model and style of the above mentioned prizes and failed to estimate their real value from the information provided in the ads. According to market conditions, it is possible that the prices of TVs, roller washing machines and refrigerators are below or above RMB 5,000 Yuan. The market price for the Chevrolet Lova 1.4 MT -1.6AT ranges from RMB 81.9 thousand to RMB 101.9 thousand Yuan. Meanwhile, we failed to find the detailed rules for this sales promotion, such as the way a participant would win such a prize, the rate at which people could win, the deadline for cashing in on the prize, and the way to receive prize, as well as relevant restrictive conditions though the ads.

China’s Law against Unfair Competition states that the maximum amount of a bonus for lottery related sales shall not exceed RMB 5,000 Yuan. According to relevant laws and regulations, the lottery promotion activity held by the China wedding expo was illegal. Therefore, staff of industrial and commercial (officials) can order them to stop their illegal activities and impose a fine on them.

Administration for Industry and Commerce: High Value Prizes Mislead Consumers

It is understood that the organizer of the China wedding expo is Beijing Bowan International Convention and Exhibition Co., Ltd. Public registered data recorded by the Wuhan Administration of Industry and Commerce showed that the registered address of its branch was established on December 2, 2013 at No. 288, Wuzhong Road, Donghu District, in Wuhan Province. However, its business address on its official website is Suit 2503, Floor 25, Building A, Optical Valley International Plaza, No. 889, Luoyu Road, Donghu Development Zone.

For this, according to a law-enforcement officer from the Industrial and Commercial Administration of the Donghu Development Zone, it would be illegal if the organizer of the China wedding expo carried out business activities by any name without applying for business licenses for its different branches.

An anonymous leader from the Administration of Industry and Commerce indicates that the *Law against Unfair Competition* forbids undertakings from holding these kinds of prizes, and the fundamental objective is to forbid undertakings from inducing consumers by using speculative psychology, and to encourage and promote fair competition so as to maintain market competition order.

Academia

Issue on Amending the *Law against Unfair Competition* officially Launched

February 28, 2014

On February 28, 2014, the Competition Enforcement Bureau of SAIC held its first conference for researching ways to amend the *Law against Unfair Competition* in Beijing. Seven professors from Peking University, Renmin University of China, the Chinese University of Political Science and Law as well as officials from competition enforcement agencies from Jiangsu, Zhejiang, Shanghai, Guangdong, Sichuan, Heilongjiang and Hubei Province (City)'s Administration of Industry and Commerce attended this conference. The attendees discussed frameworks, subject content, division of work and cooperation, etc., necessary to amend the law, which marked the official launch of the discussion on amending the *Law against Unfair Competition*.

FOCUS

NDRC Initiates Investigation: Vertical Monopoly in the Automobile Spare Parts Industry Draws Attention

March 17, 2014

After the NDRC announced in February that “they were conducting outside investigations,” at the beginning of March, the Chinese Automotive Technology & Research Centre (“CATARC”), together with insiders in maintenance, insurance and parts industries, appealed to break the monopoly of finished automobile manufacturers and 4S stores in the after-sale service market in order to promote the sustainable and healthy development of the auto repair and maintenance industry.

Monopoly Drives up the Price of Spare Parts

If you lose your car key you have to pay over 2,000 RMB for a duplicated one in a 4S store, while in an ordinary auto parts mall, you will spend no more than 200 RMB for it. This is a common phenomenon in the after-sales service field. Nearly all auto parts sold in 4S stores cost several times more than those sold in common maintenance enterprises. The real cause of this phenomenon is the finished automobile manufacturers' monopoly over auto parts distribution.

Insiders disclosed that currently a “chain of interest” has been formed under this finished automobile manufacturers monopoly. For example, an enterprise importing finished automobiles will purchase auto parts from spare parts companies and sell them to 4S stores with a price markup of 50%-100%. Then, the 4S store resells the parts to customers with another price markup of 50%-100%. Finally, the total price of auto parts for an imported car is 3 to 5 times higher than the car itself.

In order to force customers to buy parts in 4S stores, finished automobile manufacturers require upstream auto parts manufacturers to sign agreements ensuring that accessories produced by upstream manufacturers will not flow to private after-sales service markets, but will instead be sold to 4S stores only through finished automobile manufacturers. It is because of the above monopoly in the auto parts distribution channel that finished automobile manufacturers manage to drive up the price of auto parts.

“Apart from the monopoly in the auto parts distribution channels, automobile manufacturers also block access to technical maintenance information, which leads to an inherent lack of technology in comprehensive maintenance enterprises.

Consequently, the maintenance enterprises are not able to compete with 4S stores,” said Yonghe Huang, the Director and Chief engineer of the Industry Policy Research Office under CATARC.

At present, according to the distribution channels, there are two types of auto parts in the domestic market: original equipment (“OE”) and after-market (“AM”). Subject to the monopoly of finished automobile manufacturers, common maintenance enterprises are not able get OE parts through a proper channel at all. At the same time, since many production sources and distribution channels of AM parts are complicated, fake auto parts of poor quality flow into the market, making it more difficult for common maintenance enterprises to win customers.

The Monopoly in the After-sales Service Market must be Broken Immediately

“Finished automobile manufacturers indeed have vertical monopoly power in the Chinese auto parts market,” Huang said. The legislating authority is now advising relevant departments to make policy adjustments and plans to break the automobile manufacturers’ monopoly in the distribution channels of OE parts, as well as their restrictions on auto parts suppliers through changes to regulations and publicizing product information.

It is widely believed that unrestrained control over the price of auto parts by the finished automobile manufacturers is related to the *Measures for the Implementation of the Administration of Automobile Brand Sales*, (“Measures”) which was promulgated in 2005. Two articles of the Measures ensure finished automobile manufacturers’ monopoly position, as follows:

“Article 18 ...They shall not provide automobile resources to enterprises that have not been authorized for automobile brand sales or enterprises that do not satisfy the conditions for such business.

...

Article 25 Automobile brand dealers shall engage in automobile brand sales, after-sale services, and supply of parts within the scope authorized by automobile suppliers.”

The good news is that at the beginning of this year, it is said that MOFCOM is inclined to amend the Measures promoting the monopoly behaviors of finished automobile manufacturers in the auto parts market. In addition, the finished automobile manufacturers' behavior violates the Anti-monopoly Law of the PRC, and the Measures need to be revised to reflect this reality.

In fact, to avoid the monopoly of the finished automobile manufacturers, the *Automotive Block Exemption Regulation* (EU 461/2010) and the application guidelines thereof explicitly stipulate that vehicle manufacturers must provide unrestricted access to vehicle repair and technical maintenance information to authorized repair shops and independent operators fairly, and without delay. “With the

EU's example, domestic finished automobile manufacturers should not refuse to provide OE parts and technical information by using business secrets as an excuse", said a director of the Transportation Department under the Ministry of Transport of the PRC.

Lin Lei, the President and CEO of Sinotrust, expects that the 2012 output value of the automobile after-sales market, mostly consisting of maintenance services, would reach RMB 400 billion, and will reach RMB 700 billion in 2015. Under such circumstances, finished automobile manufacturers and their associated 4S stores must not continue their monopoly in relevant markets, as such monopolies will harm the healthy development of the automobile market in the long term.