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Price Supervision and Anti-monopoly Bureau of NDRC Organized Anti-Price-Monopoly Working Experts Symposium

September 14, 2015

In order to further raise the level of anti-price-monopoly working level, in the afternoon of September 9, the Price Supervision and Anti-monopoly Bureau held a expert symposium in Beijing, listening to the opinions and suggestions of the State Council Anti-monopoly Commission Expert Consultation Team members. The symposium was hosted by Director Zhang Handong, and vice-director Zhang Guangyuan, Li Qing and Lu Yanchun also attended the meeting. The Legal Affairs Division, Anti-monopoly Investigation No. 1 Division, Anti-monopoly Investigation No. 2 Division and the Competition Policy Division individually reported to the experts on the work progress of the NDRC since 2015 in terms of anti-monopoly legislation, law enforcement, research and implementation of competition policy and international cooperation and communication, etc.

The experts attending the symposium highly recognized and evaluated the results of the NDRC achieved in anti-price-monopoly work. They believed that the NDRC not only has investigated on major cases which has gained good social benefits, economic benefits and political benefits, but also has continuously improved the anti-monopoly legislation, drafted and promulgated the relevant guidelines, paid attention to the research of macro and strategic issues and enhanced the research and implementation of the competition policies. All these work all have great significance to the perfection of the anti-monopoly legal system, the construction of a market environment with fair competition and the deepening of the overall reforms.

The experts attending the meeting said that it had been 7 years since the implementation of the Anti-monopoly Law in China. It is important to fully recognize the stage of the economic development and the anti-monopoly enforcement and further strengthen and improve the anti-monopoly work. With regard to this, the experts provided six specific suggestions: First, value the effect of the competition policy on the enhancement of economic development. Second, intensify the information disclosure of anti-monopoly cases and the propaganda work. Third, continue to strengthen the dynamics of the investigation and treatment against administrative monopoly cases. Forth, formulate the anti-monopoly related guidelines scientifically. Fifth, promote the professional training and international cooperation of

anti-monopoly. Sixth, continue to maintain close communications between the enforcement agencies and the Expert Consultation Team.

Director Zhang Handong thanked the experts of the Expert Consultation Team for their support and help to the anti-monopoly work of the NDRC, and he pointed out that the promotion of the implementation of the competition policies, the reinforcement of the anti-monopoly law enforcement are critical to the construction and maintenance of a market environment with fair competition, the effective answer to the pressure of economic downturn and the deepening of the overall reforms. However, during the working process, there are issues including the imperfection of the laws and regulations, the poor awareness of the rule of law among the society including the administrative agencies, the shortage of enforcement power and the lack of enforcement methods, etc. Director Zhang hoped that the experts would continue supporting the anti-monopoly work of the NDRC and jointly promote the continuous progress of the anti-monopoly work. Director Zhang said that the opinions and suggestions from the experts would be deeply researched into by the Price Supervision and Anti-monopoly Bureau and be reflected and implemented in practical work.

The Three Anti-monopoly Authorities of China Had Dialogue with the Representatives from the Industrial and Commercial Sectors of the United States

September 10, 2015

On September 10, the Chinese anti-monopoly authorities including MOFCOM, the NDRC and the SAIC had a dialogue with the representatives from the industrial and commercial sectors of the United States. Zhang Xiangchen, vice-representative for international trade negotiation of MOFCOM attended the meeting and delivered a speech. Both parties had profound communication with respect to the anti-monopoly law enforcement of China and the specific attention of the United States industrial and commercial sectors.

Zhang Xiangchen said that reinforcing anti-monopoly law enforcement is an important measure for Chinese government to change the management model of "much more attention to approval than to supervision" and strengthen the supervision during and after. Zhang said that it was also necessary preparatory work to implement the results of the negotiation of the Sino-American bilateral investment treaty and carry out the pre-establishment of national treatment plus the negative list. The purpose of the PRC Anti-monopoly Law is to protect fair market competition, improve the efficiency of economic operation, protect consumers' interests as well as

public interests and boost the healthy development of the economy. The Chinese anti-monopoly authorities handle cases strictly according to the law, treat all market players equally, stick to the principle of openness and transparency and legally protect the lawful interests of the undertakings. Zhang emphasized that the majority of the anti-monopoly cases that had been decided concerned Chinese company and there is no issue of selective enforcement against foreign capital and overseas enterprises. With regard to the attendance of foreign legal consultants at the relevant meetings, Chinese side has made flexible adjustment for enterprises run by foreign capital. Zhang pointed out that compared to more than 100 years of development of the U.S. anti-monopoly law enforcement regime, it was not long ago that the Chinese anti-monopoly authorities started to enforcement the law. The situation is more complex than ever and there may be some procedural and technical issues during the law enforcement practice. Zhang said that the Chinese side is willing to listen to the opinions of the relevant parties and constantly improves and perfects.

It was introduced that since the enactment of the Anti-monopoly Law since 2008, until the first half of 2015, MOFCOM had finished the review of 1143 concentration of undertakings, among which 1117 had been approved without condition, 2 had been prohibited and 24 had been approved with restrictive conditions. The SAIC and the provincial AICs had investigated 31 cases, among which 23 concerned abuse of market dominance and 23 cases had been closed. The NDRC and local price authorities had investigated and made enforcement decisions on 55 cases, among which 16 were investigated by the NDRC and 39 were by local price authorities.

During the meeting, both parties also exchanged opinions on whether the simplified procedure should also be applied to concentrations of undertakings in sensitive industries, public interests in anti-monopoly reviews, how to "set price" in price supervision, the relevant factors that need to be considered in anti-monopoly reviews as well as the anti-monopoly guideline for the automobile industry and the anti-monopoly guideline concerning intellectual property, etc.

Around 40 persons consisting of the responsible persons from the departments of MOFCOM, NDRC, SAIC, American Chamber of Commerce in China, American Chamber of Commerce in Shanghai as well as the representatives of the member enterprises participated in the dialogue.

The General Summary - in the First Half of the Year, the Local Industry and Commerce Department and Market Regulation Department have Strengthened the Construction of Competition Law Enforcement Mechanism

September 6, 2015

One of the most essential measures of" strict regulations" is to improve the mechanism of law enforcement and case handling and maintain the market order for fair competition. Under the new situation, how to better enforce competition law has become the key issue that Industry and Commerce department and Market Regulation department have mainly focused.

Centered on the emphases and difficulties of current economic law enforcement case problem, all of the local departments of Industry and Commerce and Market Regulations have innovated the thinking of the competition enforcement work after system reform and institutional adjustment, oriented to the people's livelihood and focusing on the major typical cases and promoting the construction of the mechanism of law enforcement and case, which achieved better results.

Spare no effort to investigate cases

The local departments of Industry and Commerce and Market Regulations further strengthen survey and research, scientifically analyze on the new trend of market developing, focus law enforcement on the cases drawing high attention from the people as well as international media and the cases in the area with obvious problems and has great influence on economy and people's livelihood, focusing on the significant, typical cases.

Industrial and Commercial Bureau of Sichuan province intensified the investigation on major complex cases, and dealt with a number of cases which have negative influence in a wide range of areas. By means of supervision, the bureau directed the city-level agencies to investigate in a batch of major cases. In the first half of the year, the provincial industrial and commercial systems have dealt with 10572 cases of disturbing the order of market competition, which ranked the fifth of the nation, and the total value involved in the cases amounts to 142.5972 million RMB.

Yang Jian, the general director of the Competition Enforcement Division of Industrial and Commercial Bureau of Sichuan province, said that "Due to continuing with commercial system reform in Sichuan, the threshold for setting up companies has been lowered and unlicensed behavior showed a downward trend." He point out, in

the first half of the year, the provincial Industrial and Commercial departments investigated 2272 cases of unlicensed operation, which has declined 21.6% than last year, and the total value involved in cases amounts to 9.7664 million RMB, which has declined 73.25% than last year. The unlicensed businesses investigated are all ordinary illegal business behaviors, with no major cases involving significant safety risks.

Strengthen the guidance of comprehensive law enforcement

In the construction of long-term mechanism, SAIC guided provincial and municipal authorities to do the work of "link up within two laws", gave full play to the characteristics of "To coordinate and handle the cases by the two levels", enhanced the coordination and guidance on local Industrial and Commercial Authority, unified command, coordinated action, and investigated significant cases. On August 3 and 4, Chongqing and Anhui province reported the difficulty and next plan about the given authority of administration of competition law enforcement. The SAIC listened to the report and discussed relevant issues with officials from both investigations, and gave clear guidance, which provides a solid foundation for smoothing the investigation.

Recently, Industrial and Commercial Bureau of Jiangsu province held a symposium of fair trade law enforcement case work throughout the province, asking for various regions to enhance and strengthen "the general system of case handling", promote the relatively concentrated exercise of administrative punishments, conduct centralized management of case source clues, and specialize law enforcement topics focused on the research. Song Chuanrong, the general director of the Industrial and Commercial Bureau of fair trading of Jiangsu province points out that "we need to establish and improve case source clues centralized management, administrative case distribution management, the mechanism for ensuring adequate funding for law enforcement equipment and working Law enforcement and case information construction, law enforcement case incentive mechanism, internal and external mechanism of collaboration； establish a powerful law enforcement case guidance system with outstanding good guidelines for the law enforcement market supervision and regulation department；and to establish and improve the law enforcement working performance evaluation mechanism, regularly to evaluate species and numbers of investigation cases, law enforcement standards, law enforcement innovation, and so on. To conduct a comprehensive evaluation, and formulate the corresponding incentive mechanism." Song Chuanrong said, "With the integration of internal law enforcement personnel resources, the rational allocation of professional law enforcement personnel, and establishment of a younger, professional, practical type of backup law enforcement personnel resource, law enforcement cadre must strengthen the business study, strengthen the consciousness of main body, enforce the law for people. Dare to drawing sword, and work on more investigation of major cases."

Promoting the construction of law enforcement mechanism

In order to cultivate professional law enforcement personnel, the Shanghai branch of SAIC has issued the *Solutions on Management of the Talents Pool of Law Enforcement* (hereafter referred to as the ***Solutions***) to promote the specialization of construction of law enforcement team. According to the ***Solutions***, the SAIC Shanghai will, by means of recommendation by individual and organization and through panel review and approval, promote the personnel selection for the municipal law enforcement backbone personnel, and will form a pool of about 80 members. The bureau will organize regular concentrated training and work communication, select talent personnel to participate in administration of law enforcement training, and will also summarize the examination talent personnel work, evaluate in writing, and give feedback to the department of the personnel.

The AIC of Zhejiang province has issued 12 measures to further strengthen the construction of province law enforcement team and improve the mechanism of law enforcement. One is complete with talent staff, the members in every level are requested to be full, if in special circumstances it cannot be fully equipped, members shall not be less than 80% of the plan. The second is to strengthen collaboration, establish and improve the general team, the branch team, the sub-branch team and the supervision office, which are the 4 levels of working system. The third is to implement the unified law enforcement actions, the implementation of unified command, unified steps, focused action. The fourth is assigned by strict case, improve the efficiency of case to undertake. The fifth is to report the implementation of major cases. The sixth is to strengthen information management, give full play to their role as the big data, improving case information management level. The seventh is to build an investigators' think tank, to implement classification set and dynamic management. The eighth, strengthen training of business communication, improve the level of law enforcement. The ninth is to organize the annual "example cases" selection. The tenth, implementation of major cases instant rewards; The eleventh is to find out the responsibility, to strengthen the law enforcement supervision and inspection. The twelfth is to implement equipment safeguard funds and ensure the efficiency of handling cases.

In addition, every local agency strengthens the cooperation with other administrative authorities and judicial authorities, to explore in establishing the whole industrial chain and the supply chain synergy and a pattern of joint management on social work. Actively promote local authorities to publish the information of punishment. These mechanisms have played positive role for SAIC to gain the initiative in guidance and improve the efficiency of local authorities in case handling.

ACADEMIA

2015 Intellectual Property and Antitrust Forum: A Full-dimension Disclosure of Antitrust Enforcement Data

September 14, 2015

On September 12 and 13, 2015, the "2015 Intellectual Property and Antitrust Forum" was held in Beijing. The host of the Forum is China Intellectual Property Law Association, and the co-organizers are UIBE Competition Law Center, Electronic Intellectual Property Center, MIIT and Intellectual Property School, Renmin University of China.

The participants of the Forum include Officials of the three Antitrust Enforcement Authorities and Other Government Departments, Judges of IP Tribunal of SPC and Local Courts, Commissioner of US Federal Trade Commission, Senior Judge of US Court, Scholars, Economics Experts and Lawyers of Chinese and Foreign Intellectual Property and Antitrust, etc.

The Forum focuses on the following topics: new progress in China's anti-monopoly legislation, enforcement and judicature, royalty of FRAND terms , patents hold-up and reverse hold-up, the non-patent entity (NPE) and patent advocate entity (PAE) and the resulting competition issues, bundling of standard essential patent (SEP) and NON-SEP, the Internet industry and the application of anti-trust rules and so on.

According to this Forum as well as the disclosure information of pervious conference, the law legislation, law enforcement, judicial situation of AML since it came into effect seven years ago is briefly summarized as follows:

NDRC:

- NDRC and the local price control departments have investigated and made enforcement decision of 55 antitrust cases, including 16 cases handled by NDRC and 39 cases handled by the local price control departments.

- Besides the economic monopoly cases, there are administrative monopoly cases in the cases investigated by NDRC. The investigation of administrative monopoly cases will contribute to the implementation of the relevant national reform measures.

- The first draft of six Antitrust Guidelines formulated by NDRC is intended to be completed at the end of this year and completed in June 2016.

- In addition, NDRC is studying the development of "Fair Competition Censorship", the promulgation will be at the end of the year, which will establish a coordination mechanism for competition policy and other national policy.

MOFCOM:

- MOFCOM concluded a total of 1143 cases of Undertakings Concentration (as of June 30, 2015), in which 1117 were approved unconditionally, 2 were banned, 24 were approved conditionally. For the 24 cases of conditional approval, 6 cases had been executed under supervision.

- As of September this year, MOFCOM has investigated more than 50 undertakings concentration cases of violating AML, of which 31 cases' investigation have been finished, 11 cases were penalized involving 17 companies. These enterprises include state-owned enterprises, private enterprises and foreign-funded enterprises.

- MOFCOM is studying to modify the Measures for Notification of Concentrations between Undertakings and the Measures for Review of Concentrations between Undertakings, which aims to be completed by the end of this year.

SAIC:

- SAIC and provincial industrial and commercial authorities registered and investigated 54 cases of alleged monopolistic behavior, including 31 cases of alleged monopoly agreements, 23 cases of alleged abusing market dominant position, 23 cases have been finished so far. 3 cases were directly investigated by SAIC and other cases were handled by 19 provincial industrial and commercial authorities separately.

Courts:

The anti-trust civil cases handled by People's Courts nation-wide have increased steadily, with a total of 10 cases in 2008/2009, 33 cases in 2010, 48 cases in 2011, 55 cases in 2012, 72 cases in 2013, 86 cases in 2014.

CASES

Yunan Private Enterprise V. Sinopec Anti-trust Case, the High Court Ruling the Retrial

September 11, 2015

Recently, the Second Instance of Yunnan Ying Ding Bioenergy AG v China Petroleum and Chemical Corporation, Sinopec Sales Company Yunnan Oil Branch for Refusal to Sell Its Biodiesel Case was carried out at Yunnan Provincial High People's Court. After six hours' trial, the Court did not pass a sentence in court; Ying Ding and Sinopec Sales Company Yunnan Branch expressed their willingness to accept mediation, while Sinopec rejected mediation.

In early January 2014, the Ying Ding Company submitted a case to the Court requiring the Sinopec and Sinopec Sales Company Yunnan Branch to include the biodiesel produced by Ying Ding Company in fuel sales system. On December 8 of the same year, the Kunming Intermediate people's court made the first-instance judgment, judging that the Sinopec Sales Company Yunnan Branch violates the AML and set a deadline to receive the biodiesel produced by Ying Ding Company. Both the plaintiff and the defendant refused to accept the first-instance judgment and appealed to Yunnan Provincial High People's Court.

In the second instance trial on April 22, Ying Ding Company still commuted Sinopec and Sinopec Sales Company Yunnan Branch both receive its biodiesel products and compensate the economic loss; the litigation claim of Sinopec and Sinopec Sales Company Yunnan Branch was revoking the original judgment and dismissing all of the claims of the plaintiff in the first instance.

At trial, the focus of Sinopec and Sinopec Sales Company Yunnan branch in evidence-proving and argument had changed compared to the first instance. Sinopec considered that according to the provisions of AML, the determination of "relevant market" in which Sinopec processed a "dominant market position" was wrong. Its agent put to proof and stated that since the main component of biodiesel was Fatty acid methyl ester, such chemical products, in addition to fuel blending, had other chemical purposes. Therefore, the "relevant market" should be Fatty acid methyl esters market, rather than petroleum market, and Sinopec processed no dominant position in this market.

Two agents of Sinopec stated respectively that since the Fatty acid methyl ester was

the intermediate product to produce biodiesel blend fuels, Sinopec and Ying Ding Company was in "upstream and downstream relationship " rather than "parallel competition relationship". Therefore, Sinopec did not "refuse to transaction". Meanwhile, Sinopec aspect had justified reasons for not reaching to a transaction, and the first instance judgment cannot actually be operated.

The agent of Ying Ding Company cross-examined evidence and debated that the Measures for the Administration of Refined Oil Market clearly defined that "Refined Oil refers to the gasoline, diesel, kerosene and other alternative fuels such as ethanol gasoline and biodiesel meeting the national product quality standards and with the same purpose". Therefore, the "relevant market" should be refined as oil market. Meanwhile, the evidence shows that Sinopec has a 67% share of the refined oil market in Yunnan Province.

The agent of Ying Ding Company considered that the Renewable Energy Law stipulated that the product quality of the biodiesel manufacturing company only needs to meet the national standard. How to compound, fill and transport does not belong to producer's obligations.

Before the trial was over, Ding Ying Company and Sinopec Sales Company Yunnan Branch expressed willingness to accept the mediation, while Sinopec rejected mediation.

The court said the mediation will be organized in the near future, and if it is unable to mediate, the Court will choose a sentencing date.

Dongfeng Nissan was Fined 120 Million for its Behavior of Price Monopoly Agreement

September 10, 2015

Recently, Development and Reform Commission of Guangdong province made an administrative penalty on the automobile anti-monopoly case of Dongfeng Nissan according to law, fining 123.3 million RMB on Dongfeng Nissan Auto Sales Ltd (hereinafter referred to as “Dongfeng Nissan”) and 19.12 million RMB on 17 dealers in Guangzhou region.

Development and Reform Commission of Guangdong province opened an anti-monopoly investigation on Dongfeng Nissan in August 2014 in accordance with the law. It is found that from 2012 to July 2014, Dongfeng Nissan strictly restricted the quoted price and final sale price of vehicle sales of dealers in Guangdong province on the internet, on the telephone and in business halls through issuing business

provision, price control method and examination system etc., and fined dealers in Guangzhou for violating price control measures in 2013. Dongfeng Nissan and its dealers in Guangdong province reached and implemented monopoly agreements fixing automobile resale price, which violated the provision of article 14 of the *Anti-Monopoly Law*, and eliminated and restricted competition in relevant market and injured consumers' interests.

It is also found that from April 2012 to July 2014, under the organization of cooperation association of Dongfeng Nissan in Guangzhou region, dealers in Guangzhou region held meetings for many times, reached and implemented monopoly agreements fixing price of relevant vehicle models, which violated the provision of article 13 of the *Anti-Monopoly Law.*

Dongfeng Nissan actively cooperated with the investigation, stopped relevant unlawful acts immediately after the beginning of the investigation and modified company management policies such as distribution agreement and business provision per the provisions of law; Dealers in Guangzhou stopped price negotiation and abolished regional price agreement. According to the provisions of article 46 and article 49 of the *Anti-Monopoly Law of PRC*, Development and Reform Commission of Guangdong province decided to fine Dongfeng Nissan 3% of its sales revenue in the relevant market in previous year, 123.3 million RMB in total; fined on dealers who reached and implemented monopoly agreements 2%-4% of their sales of relevant market in previous year, 19.12 million RMB in total.

Development and Reform Commission of Guangdong province will continue to keep a close eye on automobile sales situation in Guangdong region, safeguard fair competition order in the market and protect consumers' interests.

FOCUS

Intellectual Property Anti-Monopoly Guideline may Come out in Next Month

September 23, 2015

Aiming at regulating behaviors such as "patent troll" etc., an anti-monopoly guideline on intellectual property will be issued. On September 22, NDRC organized and held the second seminar on anti-monopoly guideline on intellectual property abuse, 50 representatives from domestic and overseas law firms, industry associations, foreign and domestic-funded enterprises, specialists and scholars discussed on questions such as the identification of the market dominant position of IP right holders, high price royalties etc. It is presumed that the guideline will preliminarily take shape in the end of October.

Participants of the meeting carried out deep discussions on important issues in the anti-monopoly area of IP right abuse, including problems such as how to define relevant market involving IP; how to identify unfair excessive royalty; how to determine the market dominant position involving IP; how to regulate standard essential patents' particularity, including the problem of competition which may be produced by the injunction application of right holders; the problem of competition which may be produced by patent management entities; whether it is necessary to set up safe harbor system and how to carry out the institutional arrangement; the problems of competition which may be produced by patent pool and what the guideline's attitude should be like; how to determine that a behavior exercising IP right constitutes an abuse from the perspective of anti-monopoly law, etc.

With respect to the problem of unfair royalty, representatives from Hisense expressed that patent royalty paid by them accounts about 10% of selling price. Because that profit of household appliances floats greatly, from the second half of last year till now, the profit of many household appliances dropped 70%-80%. These royalties exert a big pressure on enterprises.

Representatives from Hisense expressed that license behavior itself should be made to deal with the relationship between competition and innovation, make different enterprises enter into the market easily and improve service and quality. Under this situation, negotiations between the parties should be encouraged, rather than to specifically stipulate royalty rate and standard. This also involves reasonable

compensation to patentees, after receiving reasonable returns, they will invest into further standard, if there were no such reasonable returns, patentees will not have incentives to invest into such R&D.

In the discussion of a whole day, participants of the meeting put forward many professional and specific suggestions, mainly focusing on four aspects: the first is that the guideline should have strong operability and provide a good guidance; the second is that the guideline should make a balance between IP protection and preventing IP right abuse and make specific institutional arrangements; the third is that the guideline should draw lessons from experiences and practices of other countries and regions in the world, better embody current situation in our country and the pertinence of the guideline; the fourth is that the guideline should have certain stability and foresight, but the guideline can hardly solve all problems in the anti-monopoly regulation area of IP right abuse in one time, certain choices should be made and improve the guideline based on the practices in the future.

Participants of the meeting expressed that it is very necessary to formulate a unified anti-monopoly guideline of IP right abuse at the level of the Anti-monopoly Commission of the State Council, which could further clarify the principles, thoughts and procedures etc. of the anti-monopoly law enforcement of IP right abuse and give a more specific rational expectation for market entities.

Relevant principals of the Anti-monopoly Bureau of NDRC expressed that in the next step we will pay close attention to promote research and draft work of the guideline on the basis of thoroughly researching on opinions of relevant parities, formulate the guideline draft as soon as possible and further ask for opinions and suggestions from all parties through various ways.

Ownership of the Intellectual Property: the Anti-Monopoly Guideline will Clarify the Boundary Line of Accessories Authorization

September 22, 2015

After Dongfeng Nissan was heavily fined 120 million RMB on the tenth of September, both automobile enterprises and dealers have tightened their nerves. Nobody knows who will be punished next by the big waving anti-monopoly stick.

The worry is not without reason - not long ago, relevant principals of the Price Supervision Bureau expressed in the meeting of enterprises in the automobile chain

that "in these two years some problems have been exposed, some enterprises have been punished, but our law enforcement will not stop."

What worries automobile enterprises more is the pattern adopted in the past 20 years, especially the regulation on after-sale spare parts, most of the vehicle enterprises may have crossed the red line of anti-monopoly law. This kind of situation leads to the high ratio of spare parts to whole vehicle, consumers are forced to pay high vehicle maintenance cost.

Disputes are hard to avoid in a complex chain of interests. "vehicle enterprises, spare parts enterprises and dealers focus on their own interests respectively and hope to maximize their own interests." Insiders who are familiar with the formulation commission of the *Anti-Monopoly Law*'s auxiliary regulation *Automobile Anti-Monopoly Guideline* (hereinafter referred to as the Guideline) consider that this kind of situation is normal, law enforcement agencies and all sectors of society should have an objective understanding on this.

Controversies between vehicle enterprises and spare parts enterprises mainly involve two aspects: the first is the IP ownership definition of spare parts; the second is that in the market circulation of spare parts, to what position should vehicle enterprises place relevant power and how should the authorization channels and independent after-sale channels of spare parts coexist with each other.

"The Guideline will give corresponding guidance on this question". The above insiders explained the principles of the Guideline in its formulation process when facing with these questions, and the direction of the future can be basically deduced.

Three circumstances of IP definition disputes

The monopoly of spare parts originates from the powerful position of the auto companies, which have categorical power in the whole auto industry chain. They control the circulation of parts in the upstream and the procurement of distributors in the downstream. It is typical vertical monopoly.

After purchasing automobiles, customers will be locked in this chain, and can only obtain maintenance service in 4S stores at high prices. Independent stores and auto customers cannot get out of this controlled channel to buy original parts.

Objectively speaking, such position stems from the auto companies' strength in R&D and the core status of their products. Therefore, in China market, such mode has never been challenged prior to the promulgation of the AML.

In the process of preparing the Guideline, relative government departments gathered auto companies, parts manufacturers, distributors and associations together to discuss,

and the parts manufacturers raised the disputes before the parties and challenged the auto companies. Another round of discussion is expected to held in early October.

The key issues refer to the definition of abuse of parts' IPR and how to protect IPR and what are the respective rights of auto companies and parts manufacturers. The auto companies raised three questions: First, the mould for making parts is forged by auto company and the mould's worklife may last to 100,000 pieces. If the parts manufacturers sell parts, they will increase the cost of auto companies.

Second, if the parts with manufacturer's logo are sold, can auto companies directly determine it as tort? This is rather complex, because the IPR of certain parts may be collectively owned. Third, if auto companies have exclusive IPR independently on the parts, can it be managed and controlled?

During routine negotiations between parts manufacturers and auto companies, the topics cannot circumvent the IPR of parts. But parts manufacturers usually are less powerful, in the general trend of anti-monopoly, their response is clearly aimed: The moulds and patents with independent IPR by auto companies will not be sold by parts providers; the key issue is how to define the IPR.

A senior manager of a top auto parts company believes that the strength of auto companies leads to the disadvantage of parts manufacturers in the determination of IPR. "Many of the parts basic development platforms are completed by auto parts companies. Each year, a vast amount of R&D expense will be input in the development of basic parts on the platform. Auto companies are actually developing at next stage, only providing a port or a dimension. In previous cases, IPR under such circumstances all belong to auto companies."

In addition, auto parts companies commonly hold that those parts which can be sold shall be permitted to carry the logo and product code. This is because the extent to which the parts company can be recognized by consumers depends on whether the parts can be imprinted with the company's logo. Currently, the parts sold by the parts companies are not recognized by the consumers even if they are exactly the same with the original parts.

How will the Guideline being formulated face these disputes? The abovementioned authorities stated that under normal circumstances, it is determined or made in agreement in accordance with IP law and contract law. However, if either main engine plants or parts plants use the market power to coerce the other party into waiving the IP it has rights to, it may restrict or exclude competition in the parts provision and circulation market, which will likely violate the AML for abusing IP.

It is certain that the Guideline which will be completed in the second half of the year will respond to this question. "However, the AML especially pays attention to the

analysis on an ad hoc basis and rules against uniformity in all cases. The legitimacy assessment of individual cases must be based on specific situations of the cases, e.g., the main engine plants and parts plants need to consider respectively how to prove and support the claim on the IP.

Which is the source of chaos in maintenance market

In addition to selling the original parts, the other issue in the parts and maintenance market antimonopoly is the publicity of maintenance technical information. Such information may involve confidential information such as auto companies' patents. It relates to a vast amount of information and is a complicated problem.

"The comparative study in each area of the issue has been accomplished by the drafting team, and the expirical market research is still underway."The abovementioned authority said.

However, there are many disputes in the possible influence of the above two aspects. Some auto companies think that the degree of openness shall be considered carefully, because there are faked and inferior parts which are bought by 4S stores outside or from independent aftermarket channel; the more openness, the more chaos in the market.

"Now the 4S stores are compelled to purchase some parts from outside. Once the regulation is released, the 4S stores may purchase low-cost parts in an overall manner, which will harm the consumers."A manager from an auto company said.

But the parts manufacturers think that the powerful control by auto companies results in the prevalence of the faked and inferior parts. The whole vehicle plants bring about the insufficient competition in parts market, the independent aftersale market cannot acquire original parts, which are at high price in the authorized channel and contribute to the result of faked and inferior products. "If the control is released, the price of original parts will surely go down which will in turn suppress the inferior products."

The new auto sales are already unprofitable for the distributors, whose profits mainly come from repair and maintenance. The open secret in the industry is that many original parts have risen more than once in price when sold to distributors, and the price they sell to consumers will double again.

Auto antimonopoly will surely cut this profit chain. The distributors may face the shuffle or transformation. Some managers of auto companies think that the impact on repair and maintenance is more than that. The currently emerging maintenance O2O give considerable subsidies to customers which challenges the profiting of 4S stores with high costs. However, such behaviors are commonly deemed as market behavior rather than rat race.

The above authority claims that: "The relation between authorized distribution and manufacturers based on *the Implementation Measures for Automotive Brand Sales and Management* is now inconsistent with the domestic auto market's development demand, thus will be certainly restructured, even if the parties are unwilling to accept."

However, for those large durables like automobile, the authorized distribution is the mainstream all over the world. Even considering the new technologies such as smart manufacture and smart phone, "Internet + Authorized Automobile Distribution" will probably be the mainstream in the foreseeable future.

"The Guideline needs to take into account the maturity, development stage and regulation conditions of the domestic market, and shall not directly copy the experience from other countries regardless of the specific situation in China. In terms of interest balance, reference of other countries' practices and considering Chinese specific situations, it shall not deviate from the purpose stipulated in Article 1 of the AML."The above authority said.

New Advance on the Complaint from Qunar Against the Alleged Monopoly of Ctrip

September 8, 2015

The Ministry of Commerce of the People's Republic of China ("MOFCOM") has arranged a conference with Ctrip and relevant parties to investigate the related status of the transaction, according to the provisions of Anti-Monopoly Law ("AML") and other regulations.

Sheng Jiemin, the well-known expert of antitrust law and the professional of Peking University Law School thinks that the monopoly behaviors regulated in AML in China included (i) monopoly agreements reached by undertakings; (ii) the abuse of dominant market place by undertakings; (iii) concentrations of undertakings which may exclude and restrict competition. Currently, the concentration between Ctrip and Elong is obviously the third one, i.e. the concentration of undertakings.

Qunar states to believe the laws

According to the Qunar's attorney, subject to related laws and regulations, once the total China-wide turnover of the undertakings to the concentration exceeded RMB 2 billion, and at least two of the undertakings to the concentration each had a China-wide turnover exceeding RMB 0.4 billion, then the transaction may have

impacts on the market and needs to be reviewed by MOFCOM. Meanwhile, the turnover of Elong is around RMB 1.1 billion and that of Ctrip is over RMB 7 billion, which are far more than the above threshold of 0.4 billion and/or 2 billion. Thus according to the normal procedure, the Ctrip's acquisition of Elong shall make the premerger filing to MOFCOM before the completion of shareholding rights transfer, however, the transaction has not been notified.

Jiang Liyong stated that MOFCOM is now investigating and has not initiated the case currently. "After the initiation, MOFCOM will contact Ctrip which will have 30 days to prepare before submitting relevant materials to MOFCOM, however, in this process Ctrip is prohibited to make further acquisition." It is known that the investigation period of MOFCOM is not expressly restricted and for this Jiang Liyong thinks that "the reasonable period should be 60 days even though there is no provided period."

Regarding MOFCOM's response that the complaint is under investigation, Qunar stated yesterday that it believes the competent departments will handle the case subject to the laws.

Ctrip has no response temporarily

Ctrip has not responded to the investigation by now.

However, Ctrip has ever made a voice after Qunar announced to have submitted the complaint documents to Anti-Monopoly Bureau of MOFCOM, that Ctrip will only become one of the numerous shareholders of Elong after the strategic investment in Elong. Moreover, Tencent has sent a privatization offer to Elong and after Tencent's acquisition of Elong's public joint stock, Tecent's shareholding percentage will be close to Ctrip's. The travel market in China is enormous and the total market share of Ctrip and Elong is less than 5% of the whole domestic travel market. The transaction is not enough to make any impact on the whole market.

MIIT Requires the Top Three Telecommunication Operators not to Reach Exclusive Agreements with Schools

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Recently, Ministry of Industry and Information Technology of the People's Republic of China ("MIIT") has convened a videophone conference with the three top telecommunication operators. The conference has not involved the high-level personnel changes which have attracted extensive attentions these days, nevertheless MIIT regulated the competitions of the telecommunication operators in campus again like four years before and expressly asked operators not to reach exclusive agreements

with schools in the conference. Indeed, early in 2011, MIIT has issued similar documents which regulate the campus telecommunication business, while the unfair competition situation in universities of each region was still extending, and not relieved effectively. Insiders point out that since the supervision and punishment force are insufficient such that the "marketing with excessive profit" featuring exclusive, unfair competition and monopoly is difficult to be overall prohibited. The top three telecommunication operators stated yesterday that they have not received the specific operation notice from the groups.

Shall not sign exclusive agreement

MIIT pointed out that enterprises of basic telecommunication shall strictly observe the bottom principle and maintain fair and ordered competition rule when engaging in the campus telecommunication market. More importantly MIIT expressly asked operators not to reach any exclusive agreements, not to restrict other operators entering into the campus for business. MIIT also asked operators to launch full self review in the campus market. MIIT, at the same time, stated they will make random investigation in key region in proper time. Besides, MIIT also asked the communication authorities and relevant basic telecommunication enterprises in each province, autonomous region and direct-controlled municipality to construct systems of responsibility implementation, supervision and inspection etc., and to strengthen accountability, and to punish the violations.

It is known that early in 2011, MIIT has issued the Opinions on Regulating Basic Telecommunication Operating Enterprises' Operation Business in the Campus Telecommunication Operation Market, providing that operators shall not reach any exclusive agreements (including those oral agreements) with schools, shall not reach any contract which aims to exclude competitors and provide telecommunication service in the campus exclusively, and shall not send any mobile phone user identification card (SIM, UIM etc.), business promotional materials and so on in the letter of admission without the users' agreement.

The reason that MIIT has stressed the provision for times is that there are numerous unfair methods in the unfading "campus fight" among operators year after year, while exclusive agreements are one of the mostly used "hidden rules".

Various methods of monopoly in campus

There are unfair competitions among operators in the campus all over the country and the phenomenon has not been effectively stopped even though MIIT has issued specific documents four years ago.

Last year, the freshmen of certain junior college in Jiangxi Province were told by the receptionists once entering the school that all the freshmen had to buy a mobile phone

of China Telecom in the price of RMB 250, and it will be used to enter/exist the school, dormitory, refectory and in shopping, and this is the "one card for all" cooperating project between the school and the China Telecom. The students who not do so will be not able to have a meal in the refectory, to take shower, to borrow books from the library and so on, including entering/existing the school door or dormitory. While in another institutions of higher technologies in Wuhan, the mobile phone card was attached in the letter of admission and students have to bundle the mobile phone card in the letter of admission with their ID card after entering the school.

"Exclusive agreements and other similar methods are unfair, the striking and undercutting phenomenon has no good to the image of the operator itself, but also does harm to the entire industrial ecology, and has constituted enormous cost loss." said Xiang Ligang, the telecommunication expert.

The beginning of the school term is forthcoming this year and it is known that every operator has started the "campus fight" in advance. China Unicom has recently launched "internet+", a campus marketing project in 2015. This time juncture is just when the phenomenon of monopoly is likely to occur.

Supervision and punishment is difficult to take effects

Xiang Ligang pointed out that the reason that the campus telecom monopoly cannot be prohibited for times is that the campus market accounts for a considerable share in the whole telecom market and is profitable. Moreover the whole telecom market is increasingly saturated nowadays and the top three operators will pay more attention to this large cake for their performance.

Data shows that in the first half of the year the profitability of China Mobile and China Telecom both decreased, while China Unicom has lost more than 10 million users in the half year.

"Even though each operator is competing via various methods, China Mobile still owns the largest market share in the campus market." said Xiang Ligang.

It is reported that China Mobile is the earliest operator entering the campus market among the top three, and has formally launched "M-ZONE" which mostly focused on the campus market in March 2002. One insider disclosed that the assess standard of China Mobile in the campus market is 90% to 95%, that is to say, among each 100 new users in the campus market, 90 or 95 must be the user of China Mobile.

Xiang Ligang analyzed that only the current supervision of local communications authorities is not sufficient to fully prohibit those unfair competitions in the campus telecommunication market due to (i) great power of work; (ii) insufficient punishment

strength. Nowadays the management rules are not detailed and explicit enough and there will be more problems when facing complex situations.

A relevant responsible staff of China Telecom said that the company will implement according to the requirement of MIIT but the specific action notice has not been received from the group. Relevant staffs of China Mobile and China Unicom also stated that they have not received any relevant requirements.