

天地和律師事務所 T&D Associates

China

Monthly Anti-Trust Report

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Due to the general nature of its contents,

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

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AUTHORITY

Anti-monopoly Bureau of MOFCOM Organized the 2015 National Business Sector Anti-monopoly Work Forum

November 19, 2015

From November 16 to 17, 2015, the Anti-monopoly Bureau of MOFCOM held the National Business Sector Anti-monopoly Work Forum. During the forum, the relevant situation of MOFCOM's anti-monopoly work since 2015 was described to the representatives of the business administration departments, chambers of commerce and associations of the various provinces, autonomous regions, municipalities directly under the central authority and cities specifically designated in the state plan, and the current situation of the anti-monopoly work and future working thoughts were introduced as well. The representatives gave speeches during the forum and had full discussions on the focused questions.

Director of SAIC: Anti-monopoly and Anti-unfair Competition Should be Enforced in E-commerce

November 18, 2015

On November 17, Director Zhang Mao of the SAIC conducted another survey in the e-commerce industry. During the survey, Director Zhang Mao raised three opinions: "(SAIC) supports the development of cross-border e-businesses such as Jumei which helps boost domestic consumption; the industry and commerce sector will establish and perfect the online credit supervision system and propose the creation of wealth by credit; and break monopoly and anti-unfair competition. The industry and commerce sector should create a fair and orderly competing environment for enterprises."

Director Zhang Mao said that the fact that duty-free shops abroad are full of Chinese customers not only means that the Chinese have vigorous consumption demand and ability, but also poses a challenge to Chinese enterprises: how to bring the consumption abroad back home. He said that the expansion of consumption is the key focus of the domestic economic development in the next five years, and that the premier repeatedly mentioned the great mass fervor of consumption abroad by the Chinese. Besides, the State Council has held multiple conferences studying how to attract consumption back home.

Deputy-director Gan Lin who went along for the survey said that he hoped the various e-businesses would open their data to MOFCOM in order to cooperate with the supervision of enterprises' credit by the industry and commerce agencies. Chief of the Online Transaction Supervision Division of the SAIC, Liu Hongliang said that for third party businesses, if the industry and commerce agencies do not obtain the registration information, they will be placed in the fade zone of supervision. Therefore, future legislation in the e-commerce industry should consider this point.

During the survey, the SAIC once again mentioned the issue of anti-unfair competition in the e-commerce industry. Liu Hongliang said that for unfair competition in the e-commerce industry, he had new understandings. Previously he focused more on striking unfair competition, but he later found out that unfair competition is caused by the monopoly of operating state and method of operation. Therefore, anti-monopoly work should also be stressed in e-commerce industry. He empathized that enterprises also bear the responsibility to maintain good competition orders in the market and that to do so the first thing is self-discipline. Besides, the industry and commerce agencies will also "make strong response" to it.

Zhang Mao summarized that anti-monopoly and anti-unfair competition are in order to create an environment with sufficient competition, fair competition and orderly competition. For enterprises that engage in unfair competition, anti-monopoly and anti-unfair competition will make them "blocked in everywhere and thus raise the costs of unfair competition". To achieve this, the self-discipline of the enterprises is necessary, and it is also necessary for enterprises to closely cooperate with the industry and commerce departments and provide the relevant data, so as to perfect the way of supervision.

Officials of the Chinese Anti-monopoly Enforcement Agencies Met with the Officials of US FTC and DOJ

November 18, 2015

On November 17, Director Zhang Handong of the Price Supervision and Anti-monopoly Bureau of the NDRC met with Commissioner of the US FTC, Ms. Terrell McSweeney and Deputy Assistant Attorney General of the US DOJ, Ms. Renata Hesse. The two sides had discussions and communications on the current status of the drafting of six guidelines including the intellectual property, automotive, exemption procedure and calculation of penalty guidelines, the publicizing and proposing of the competition policy in China as well as the Sino-America anti-monopoly high level dialogue to be held soon.

Director Shang Ming of the Anti-monopoly Bureau of MOFCOM met with Commissioner of the US FTC, Ms. Terrell McSweeney, Deputy Assistant Attorney General of the US DOJ, Ms. Renata Hesse and official of the US DOJ, Lynda Marshall, et al. Director Shang Ming introduced the review of concentration of undertakings by MOFCOM and had discussions with the US side on issues including the simplified approval procedure, the new measures on the concentration of undertakings as well as the cooperation on review work, etc. The US side further expressed wishes to further deepen the cooperation with MOFCOM in the area of anti-monopoly law enforcement.

Deputy-director of the Price Supervision and Anti-monopoly Bureau of the NDRC Visited US FTC and DOJ

November 10, 2015

On November 3, Deputy-director Li Qing of the Price Supervision and Anti-monopoly Bureau visited the US anti-monopoly law enforcement agencies DOJ and FTC during the visit in the US. The parties exchanged opinions on the preparation work of the Sino-America anti-monopoly high level dialogue that is proposed to be held in January 2016, and communicated with each other on the recent work progress. Deputy-director Li Qing introduced to the US side the recent progress of guideline drafting and enforcement work of the NDRC, and listened to the comments and suggestions of the US side on the relevant issues. The US side expressed appreciation for the positive progress achieved by the NDRC in anti-monopoly work and willingness to further share with Chinese side the relevant practice and experience.

Director of the Price Supervision and Anti-monopoly Bureau of NDRC Attended the 2015 Anti-monopoly Economy Conference and Witnessed the Signing of the China-Australia Anti-monopoly Cooperation Memorandum of Understanding

November 9, 2015

On November 5, Director Zhang Handong of the Price Supervision and Anti-monopoly Bureau of the NDRC attended the 2015 Anti-monopoly Economy

Conference, during which he gave a speech on the enforcement practice and thoughts in relation to horizontal monopoly agreements and had in-depth communications with the anti-monopoly enforcement officials and scholars from Australia, the UK and New Zealand on the issue of anti-monopoly economic analysis. During the conference, Director Zhang Handong met with Chairman Rod Sims of the Australian Competition and Consumer Commission and jointly witnessed the signing of the China-Australia Anti-monopoly Cooperation Memorandum of Understanding.

NDRC Investigated on 6 Administrative Monopoly Cases after the Implementation of AML

November 6, 2015

On November 5, NDRC held a press conference to introduce the relevant circumstances on price reforming and price supervision. The inspector of Price Supervision and Inspection and Anti-monopoly Bureau of NDRC, Dong Zhiming, said that since the AML was implemented, NDRC has investigated on 6 administrative monopoly cases, among which five cases were in this year.

Dong expressed that the administrative monopoly is an important form of monopoly behaviors. As an antimonopoly enforcement authority, NDRC has seriously performed its legal duty, not only investigated on the monopoly behaviors implemented by the undertakings, but also regulated the abuse of administrative power to exclude or restrict competition. The statistics showed that after the implementation of AML, NDRC has totally investigated 6 cases, among which 5 are in this year, and respectively legally rectified the behaviors violating the AML implemented by the government departments such as Transport Department of Hebei Province, Transport Department of Shandong Province, Communications Bureau of Yunnan Province, Health Development Planning Commission of Anhui Province Bengbu city, Health Development Planning Commission of Sichuan Province. The behaviors include regional protectionism, designating deals, coercive deals, formulating regulations that has contents that exclude or restrict competition.

Dong also pointed out that at present, the abuse of administrative power to exclude or restrict competition is still a serious phenomenon in some regions of China, which hampers the construction of unified nation market, destroys the market order of fair competition, and goes against motivating the vitality of market players and promoting the public to start businesses and conduct innovation, thus the abusive behaviors have to be investigated and rectified. The next step of NDRC is to further investigate on more administrative behaviors, maintain the fair competition market order in practice, and promote the construction of national unified market with open and orderly competition.

ACADEMIA

The T&D Attorneys ("T&D") Attended the 2015 Asia Forum Beijing Hosted by American Bar Association ("ABA")

November 16, 2015

From November 16-17, 2015, the 2015 Asia Forum Beijing was held in Beijing, the forum was hosted by ABA Section of International Law and in cooperation with Beijing Foreign Studies University. The worldwide officials of antimonopoly enforcement authorities, dozens of representatives of enterprises, academic experts, practical experts and attorneys of law firms were invited to the forum. The program tracks has set multiple sessions centered around five sections, i.e. Antitrust, Dispute Resolution, Intellectual Property, Legal Ethics & Compliance (Plenary Sessions) and Outbound Investment. By means of giving presentations and panel discussions, the participants of the forum had in-depth communication related to these international hot topics.

As the platinum sponsor, T&D had 4 attorneys attending the forum. The manager partner of T&D, Mr. John Yong Ren, attended the panel session, *Antitrust Scrutiny beyond Cartels: Vertical and Unilateral Pricing Enforcement in Asia* with the attorneys from Gilbert& Tobin, Allen & Overy and other law firms as well as economic experts, having in-depth discussions on the issues such as resale price maintenance (RPM), conditional pricing, most-favored-nation (MFN) clauses which were carried out with the attention on the current enforcement status in Asia.

The Academic Seminar of Competitive Issues in E-marketing was Held in Beijing

November 9, 2015

On November 8, 2015, The Academic Seminar of Competitive Issues in E-marketing organized by School of International Law of China University of Political Science and Law (CUPL) was held. The seminar was gathered and hosted by Prof. Dai Long, associate professor of School of International Law of CUPL, and theoretical and practical experts attended the seminar and deeply discussed the unfair competition and

monopoly issues in E-marketing and the issues of consumer protection in E-marketing competition.

In the session of unfair competition and monopoly in E-marketing, Prof. Sheng Jiemin of Peking University acted as host, the associate Prof. Dai Long, Han Wei, a lecturer of China Youth University of Political Science had discussed from the perspective of characteristics of E-marketing, the domestic and oversea competitive enforcements, judicial experience, definition of relevant market, regulation methods, etc. Finally, Dr. Zheng Dahao from CUPL made conclusive comments on the discussion.

In the session of consumer protection in E-marketing competitive issue, Prof. Shi Jianzhong of CUPL acted as host, the associate Prof. Meng Yanbei from Law School of RenMin University of China, Chen Danzhou, lecturer of Law School of University of International Business and Economics, and attorney Zhao Zhanling, the contract research fellow of China E-business Research Center discussed how to efficiently protect the consumer's rights from the perspective of the protection of consumer's interest and rights, the legislative intent of competition law, the purpose of enforcement, the roles of industrial regulator, etc. Finally, associate professor Qi Huan from International Law School of CUPL made a conclusive summary.

The T&D Attorneys Attended the 10th China Anti-Monopoly Law Advanced Seminar 2015 and Gave a Keynote Presentation

November 2, 2015

On October 30-31, 2015, the 10th China Anti-Monopoly Law Seminar 2015 was held in Beijing. The seminar has helped the participants further understand the latest development of the legislation and enforcement of AML and helped the enterprises better regulate their behaviors by means of in-depth communication with government, presentation, case analysis, etc. The invited speakers include the officials from Chinese antimonopoly law enforcement authorities, the representatives from enterprises, experts from academia and practical field, etc.

During the seminar, Mr. John Yong Ren, the managing partner of T&D, gave a keynote speech regarding the relevant market issues of SEP and selective analysis on abusive behaviors involving IPR. John discussed on the issues such as SEP and related definition of relevant market, SEP and dominant market position, relevant cases, and IPR abusive behaviors including charging unfair high royalties, refusing to license, imposing unreasonable dealing conditions, etc.

The Antitrust Review Seminar between China and Europe is Held in Shanghai

October 28, 2015

From October 22 to 23, the seminar of antitrust review of the concentration of undertakings in the second China & Europe Competition Policy Week in 2015 was held in Shanghai and Han Chunlin, Associated Inspector of the Anti-Monopoly Bureau (“AMB”) of MOFCOM attended the meeting and made a speech. There were about 20 people attending the seminar, including the representatives from the three antitrust enforcement agencies of China and officials from antitrust enforcement agencies of EU and Ireland. The parties focused on discussing the significant and difficult issues in the amendment of *Measures for Notification of Concentrations between Undertakings* and *Measures for Review of Concentrations between Undertakings* initiated by AMB, and made in-depth discussions on issues including the hearing, transparency, Intellectual Property etc. in the antitrust review of the concentration between undertakings.

CASES

Six Couriers of Lianyungang were Investigated for Holding Meetings to Negotiate to Raise Courier Fee

November 12, 2015

During the previous days before “Double 11”, 6 competing courier companies of Lianyungang city colluded with each other, holding meetings to negotiate to improve the courier fee and reached consensus to improve the price. Currently, the price department of Lianyungang city has intervened to investigate and will deal with the illegal action of controlling the market price.

It is known from the investigation from the price department, on September 28, the 6 large courier companies of Lianyungang city held meeting in the office place of one company in consultation of improving the courier fee and reached price-raising agreement, however, which failed come into effective implementation for the distrust and competition relationships among them. It is learnt that the 6 couriers companies include the giants in the domestic courier industry such as “three Tong and one Da”.

The official in the Inspection and Enforcement branch of Price Bureau of Lianyungang city stated that the price-raising of the 6 courier companies may be related to the announcement of price adjustment for the delivery end issued by the headquarters. It is known that the 6 courier companies all received the notice of their headquarters to increase fee of the end delivery, i.e. the courier fee for each item raised 0.5 Yuan.

“Raising the courier fee is to pass through the cost.” said an official. The courier fee is regulated by the market and the price department will not interfere a normal market behavior where the undertakings decide the up and down of the courier fee based on the operation cost and supply and demand situation in the market, according to the laws and regulations respectively without communication with each other. But raising price through reaching price monopoly agreement and carrying out the price alliance by mutual collusion of the courier companies is expressly prohibited by *Price Law* and *Anti-Monopoly Law*.

By now the preliminary investigation has basically come to an end. Whether the behavior is price monopoly or colluding to raise price still needs confirmation from Anti Price Monopoly Branch of the Price Bureau of Jiangsu Province. It is known that

on November 11, the Price Bureau of Lianyungang city made the *Remind Letter of Price Policy in the Courier Industry* which was sent directly to the responsible people of the 21 courier companies in Lianyungang city, asking to further regulate the courier fee, warning the local courier industry to strictly mark price clearly, prohibiting price fraud, colluding to raise price, the abuse of dominant market position and reaching the price monopoly agreements.

The Branch of Inner Mongolia Inner Mongolia Autonomous Region of China United Network Communications Limited Committed to Rectify and Reform, Which Suspended the Investigation of the Monopoly Case

November 10, 2015

With the authorization by State Administration of Industry and Commerce (“SAIC”), the Administrative Bureau of Industry and Commerce of Inner Mongolia Inner Mongolia Autonomous Region (“ABIC”) has initiated to investigate the alleged monopoly behaviors of the branch of the Inner Mongolia Autonomous Region of China United Network Communications Limited (“Inner Mongolia Unicom”) in April, 2014 and made the determination of suspension of the investigation to the company on October 28, 2015.

In March of 2013, with respect to the issues of “the tie-in sale of broadband internet, associated downtime” complained by customers of Inner Mongolia telecommunication, ABIC has made preliminary check to the related status of broadband internet service business in the telecommunication industry of Inner Mongolia. With the authorization of SAIC, ABIC has initiated to investigate Inner Mongolia Unicom on April 21, 2014.

According to the investigation, the Inner Mongolia Unicom has 1.36 million users of broadband internet as of December 31, 2014. When Inner Mongolia Unicom provided broadband internet service, through formulating or using the format agreements, it bundled the broadband internet service business with the cellphone business and the end sales business of cellphone, and correlate the broadband internet to the cellphone (fixed phone) business fee; once the cellphone of the fixed phone have overdue amount, the related broadband internet service will be stopped.

During the investigation, the Inner Mongolia Unicom confessed the fact of tie-in sale and associated downtime, and learnt the adverse effects its behaviors had on the competition. The combined product of “Intelligent Wo Family” launched in March

2015 has changed those business mode including collecting fee by year, awarding cellphone if taking the broadband business, associated cellphone halt if the cellphone of one member of the set meal is overdue, etc., and carried out the method of collecting broadband fee and cellphone fee by month. The company has stated to rectify and reform actively to eliminate the effect and hoped the ABIC to suspend the investigation. In August 19, 2015, Inner Mongolia Unicom submitted the *Application of Inner Mongolia Unicom Branch to Suspend the Anti-Monopoly Investigation* to ABIC based on the law provisions and committed to rectify and reform, and is willing to undertake any corresponding legal obligation and punishment if breaking the commitments.

ABIC considered the target of anti-monopoly enforcement is to protect competition and maintain consumers' rights and interests. Given the Inner Mongolia Unicom has cooperated with the investigation in the case investigating procedure, and has deeply recognized the behavior of the abuse of dominant market position and its negative impacts, at the same time, the rectifying measures in advance and the commitments of rectification and reform are able to eliminate and recover the effects caused by its behaviors, which has reached the goal of anti-monopoly enforcement. The ABIC made the following determinations according to the provisions of Article 45 of *Anti-Monopoly Law of the People's Republic of China*, and Article 17, 18, 19 of *Provisions on the Procedures for Industry and Commerce Authorities to Investigate and Sanction Monopoly Agreements and Abuse of Dominant Market Position*:

1. Suspend the investigation to the case.
2. Inner Mongolia Unicom shall submit written reports on the compliance of the commitments to ABIC respectively before November 15, 2015 and January 10, 2016.
3. ABIC shall supervise the status of the compliance of commitments of Inner Mongolia Unicom before November 30, 2015 and January 20, 2016; ABIC will assess the status of compliance of commitments of Inner Mongolia Unicom before June 20, 2016. If Inner Mongolia Unicom violates Paragraph 3 of Article 45 of *Anti-Monopoly Law of the People's Republic of China* and Paragraph 2 of Article 19 of *Provisions on the Procedures for Industry and Commerce Authorities to Investigate and Sanction Monopoly Agreements and Abuse of Dominant Market Position*, ABIC will restore the survey of the case base on laws.
4. If Inner Mongolia Unicom undertakes the commitments during the period of rectification and reform and conforms to the committed effects after the assessment of ABIC, ABIC will terminate the investigation according to laws.

FOCUS

Three Ministries Accelerate the Legislation of "Antitrust Guidelines"

November 23, 2015

In early November, the Price Supervision and Anti-monopoly Bureau of NDRC released that the first draft of Antitrust Guidelines for Auto Industry had been completed. And this was only one of the many antitrust enforcement guidelines promoted this year.

"From May this year, under the coordination of the Anti-Monopoly Committee of the State Council, SAIC, NDRC and MOFCOM began drafting antitrust enforcement guidelines respectively." Yang Jie, Director of the Enforcement Bureau of Anti-Monopoly & Anti-Unfair Competition of SAIC, expressed that, "At present, after preliminary discussion, the three authorities have reached a preliminary agreement that they will submit their respective draft to the Anti-Monopoly Committee before the end of January next year, to propel the subsequent comments."

The anti-monopoly promotion of protecting IPRs

According to Yang Jie, as early as 2009, SAIC had begun to study the antitrust guideline on the field of IPR, and it was in 2012 when the final draft solicited external comments. "But for some reason, the introduction of the guideline turned out to be shelved."

"The current draft of anti-monopoly enforcement guideline is carried out in accordance with the framework of the final draft of 2012, the divided chapters includes general principles (preamble), abuse of market dominant position, concentration between undertakings and specific issues." Yang Jie also said.

On April 7, SAIC released China's first anti-monopoly rules specifically aimed at abusing IPRs, i.e., *Regulations of Prohibiting Abuse of Intellectual Property Rights in order to Eliminate or Restrict Competition* (hereinafter referred to as "Regulations"), shall become effective on August 1, 2015.

The newly added "safe harbor" content in the Regulations, as an innovation to make up the lack of relevant provisions in AML, also attracted attention of the participants.

Article IV and Article V of the Regulations prohibit undertakings entering into any monopoly agreements by using the exercising method of IPRs, and also set up a "safe harbor" rule in the meanwhile. The so-called "safe harbor" rule means certain acts (such as monopolistic behavior) of undertakings may be exempted when certain preconditions prescribed by laws are satisfied.

Wu Chengjian, Senior IPR Counsel of Ericsson, expressed: "In terms of IPRs or anti-unfair competition and antitrust, everyone's goal is innovation and competition." For the standard patentee who enjoys patents, how to protect their patent rights and achieve effective relief for patent infringement in an injunction, "safe harbor" is a necessary part.

Yang Jie also expressed that in the specific provisions of the "safe harbor" rule, we still learned from the practice of some European and American countries.

"To achieve the function of the "safe harbor" rule, especially in the international disputes, needs cooperation with a friendly, flexible, neutral arbiter agency, rather than just carrying on litigation in the courts of one country. On the basis of the "safe harbor", we can better achieve the infringed party's loss relief." Wu Chengjian said.

In addition, the draft also stipulates the relatively more controversial issues of "licensing provisions and rejection", "standard of abusing market dominant position", etc.

Anti-Unfair Competition in the Big Data Era

In 2012, China had more than 5,000 group buying websites, only 100 left this year, and 80% of the market share were occupied by Meituan, Da Zhong Dian Ping and Nuomi.

"In recent years, the number of Internet unfair disputes rising year by year, the Internet competition disputes rise year by year and the proportion may reach more than 50%. But the legislative level seems very laggard in face of today's huge market and fierce competition in the Internet industry. "Baidu senior legal counsel Wang Jianxin introduced.

Alibaba legal experts Wang Qiongfai also put forward that the big data had changed our times, all-round changes in financial, smart cities, health care, sports, education, and retail. The legal big data can also be found everywhere.

"The most important thing is the data is actually no value if not recorded." Wang Qiongfai said. The record, collation, structure as well as analysis and usage of Internet service providers are the core foundation of the entire industry and it is an important

driving force. How to protect these data is the new challenge brought about by the current Internet unfair competition behavior.

According to Wang Qiongfei, it is the current mainstream consensus to conduct commercial usage after "data desensitization" with customers' agreement. It is essential and necessary to conduct commercial usage of data after desensitization, this right should be respected.

But "tempting users to authorize and stealing competitors' data is the unfair competition behaviors which are familiar to us currently. The agreement to deliver the right to commercially use data to the Internet service provider is clearly confirmed when signing the customer agreement, but the data holder may authorize another competitor who needs the data later, which is an invalid authorization. And there are also competitors stealing the raw data directly, which is also unfair competition in nature." Wang Qiongfei said.

Shi Bisheng, judge of Beijing Higher People's Court, also considers that the most fundamental purpose of the Anti-Unfair Competition Law is to protect the legitimate rights and interests of undertakings and consumers, so the judge makes judgment based on this nature when hearing the case in absence of specific rules. "For the interests of consumers, we also need further elaboration, and only the legitimate interests of the long-term are to be protected."

The First Draft of the Anti-monopoly Regulation for Automobile has been Finished, Law Enforcement will Become Normalized

November 9, 2015

On the 2015 annual meeting of Chinese automobile distribution industry, anti-monopoly became a hot topic again.

Since last year, Audi, Chrysler, Mercedes-Benz, Dongfeng Nissan and some dealers have received administrative penalty for violating the Anti-Monopoly law. Plus automotive parts enterprises, the total fine amount of anti-monopoly on the automobile industry issued by Chinese government has accumulatively exceeded 2 billion Yuan RMB.

Now, *The Anti-monopoly Guideline of the Automotive Industry* (hereinafter referred to as "The Guideline") has become the focus of attention of the whole industry. Lu Yanchun, a deputy director general of the Price Supervision and Anti-monopoly

Bureau of the NDRC, expressed in the annual meeting of distribution industry on November 6 that the first draft of the guideline of the automobile industry has been finished. Regarding The Guideline, what are the concerns of downstream and upstream enterprises of the automobile industry? What are their opinions? The industry economy website of automobile has made a summary.

**May the promotion of new cars and the de-stocking of old cars be exempted?
How long is an appropriate exemption period?**

Q: In the promotion period of new cars and the de-stocking period of old cars, automobile producers may claim for exemption according to the content of Article 15 of the Anti-Monopoly Law when they are setting vertical price restrictions on dealers, but how long is an appropriate exemption period?

Previously, on the forum of the anti-monopoly guideline for seeking for opinions, some automobile enterprises considered that: it is very necessary for the price restriction in the promotion period of new cars and the de-stocking period of old cars to be exempted. Considering that new automobile model has a long development period, the investment cost is relatively large and its lifecycle is limited, therefore, it is expected that the investment of the earlier stage should be effectively recouped in the golden period of one or two years prior to the release of a new car model. Most of the automobile enterprises consider that it is appropriate to set the two periods at six months, while some brands of cars consider that the exemption period should be one year or at least no less than half a year.

Some dealers considered that according to the competition rule of market, a protection period of price should not be set. The main reason why a lot of dealers have great loss currently is that car producers have a dominant position and the management autonomy of dealers is limited. More attentions should be paid to building a good relationship between car producers and dealers for now. The exemption right of price restriction in the promotion period of new cars and the de-stocking period of old cars is unnecessary. It is only necessary when there is an occurrence of a real revolutionary new technology.

However, in this meeting, when explaining the exemption situations in the anti-monopoly guideline, Wu Dongmei, a deputy director of the Price Supervision and Anti-monopoly Bureau of NDRC, did not mention the exemption of the promotion of new cars and the de-stocking. She only expressed that the promotion period of new energy automobile can be exempted. She expressed that whether the promotion period of traditional cars can be exempted is still under discussion and it has great controversy. Generally the products which enjoy the exemption period of promotion should use high and new technology, sometimes it is hard to determine whether the traditional new cars have used high and new technology. The exemption period of

de-stocking is no longer discussed, it is very likely that it will not be included in the anti-monopoly guideline.

Whether the new energy automobile can be exempted? If yes, can hybrid cars be included?

Q: Article 15 [The exemption of monopoly agreement] of the Anti-Monopoly Law: Monopoly agreements between undertakings that can be proven to fall under any of the following cases (including for the purpose of improving techniques, researching, and developing new products) shall be exempted. Whether this means that the new energy automobile can be exempted?

Some automobile production enterprises expressed that: if the new energy automobile can enjoy the exemption period of promotion in the anti-monopoly guideline, then the hybrid cars should also enjoy such a policy.

Regarding this, Wu Dongmei, a deputy director of the Price Supervision and Anti-monopoly Bureau of NDRC, expressed that the new energy automobile can enjoy the exemption period of promotion, currently this is only for blade electric vehicles.

Whether the e-business of automobile should enjoy the exemption?

Q: Previously, there are many discussions regarding questions such as the direct selling price of e-business. Whether the fixed price of e-business can be considered to be exempted? The automobile selling price of vertical media is even below cost sometimes, whether this kind of situation should be regulated? Regarding the e-business flagship stores established by distributors rather than car producers, whether car producers can set up a uniform price for the agreement signed with them? Some car production enterprises mentioned that besides the official websites of car enterprises, consumers usually obtain price information from the automobile vertical media and group-buying websites currently. Since they are backed up by the investment of venture capital, these websites often sell cars and provide relevant services at a price below cost, The Guideline should also consider to regulate this kind of situation.

Wu Dongmei, deputy director of the Price Supervision and Anti-monopoly Bureau of NDRC, expressed that in the e-business trade of car providers, namely through the e-business platform, car providers and consumers or third parties directly reach the transaction price, dealers are only used for the selling behavior in the transaction, this can enjoy an exemption right of vertical restriction. Regarding other forms of e-business, previously, deputy director Wu Dongmei expressed that although price of e-business platform is low, the behavior of selling below cost forbidden by the Anti-Monopoly Law is on the premise that relevant undertakings have a dominant

market position. Both the Price Law and the Anti-unfair Competition Law have relevant regulations on this.

Whether the restriction on the out-sourced accessories of 4S shops involves monopoly?

Q: Regarding the quality of accessories, consumers seem to trust the system of 4S shops authorized by car producers more, compared with that of independent garages. However, with the change of the market, car producers are beginning to allow dealers to outsource. Then when not informing consumers that outsourced accessories are not accessories from the original factory damages the image of the car producers, can car producers regulate on the outsource of accessories of 4S shops? Can car producers restrict the supply of accessories of the original factory by dealers to independent garages?

Some enterprises considered that car enterprises can allow dealers to outsource spare and accessory parts, but The Guideline should also adequately protect the intellectual property rights of the car enterprises. After stamping the brand of car enterprises, spare and accessory parts suppliers should be authorized by car enterprises before selling spare and accessory parts directly. And the intellectual property rights of the accessories of the original car factory of car enterprises should not be violated.

Vice president of group operation of Beijing Wintop Group Investment Co., Ltd, Sunfeng considered that the restriction of spare and accessory parts is against the regulations and suspected of monopoly. Some spare and accessory parts enterprises also expressed that the development results of spare and accessory parts do not always only belong to car enterprises, sometimes they are jointly possessed. Regarding the accessory parts initially assembled, it should be made clear whether the brands of car enterprises or the brands of car enterprises and accessory parts enterprises should be printed, namely the issue of accessory parts of double brands, on which The Guideline should regulate. Even if car enterprises have the intellectual property rights, they cannot abuse such rights.

Wu Dongmei, deputy director of the Price Supervision and Anti-monopoly Bureau of NDRC, expressed that in the production chain of after-sale accessories, without justification, the car producers which have a dominant position in the after-sale market of its brands should not restrict the right of accessories producers to produce “accessory parts of double brands”(except for OEM). In the supply and circulation links of after-sale accessories, without justification, the car producers which have a dominant position in the after-sale market of its brands should not restrict the supply and circulation of after-sale accessories, including: should not restrict the right of authorized dealers and maintainers to outsource accessories; should not restrict the right of accessories producers and authorized maintainers to sell accessories in the market.

Whether the behavior of “jointly holding together for warmth” of dealers is suspected of monopoly?

Q: Some dealers expressed that when coping with car production enterprises, dealers have dispersed power, plus many previous “latent rules”, dealers usually are disadvantaged groups. If the interests of dealers are violated, can they “jointly hold together for warmth”? Whether such behavior will be suspected of monopoly? In which way should the dealers cope with such situation?

Regarding this, Lu Yanchun, deputy director general of the Price Supervision and Anti-monopoly Bureau of NDRC, expressed that if there indeed is such kind of a need, dealers should report this situation first and deal with it according to procedure and do not do anything without authorization.

Jingdong Submits Real-Name Report to Chinese Antitrust Authority against Alibaba, Alibaba Responded: Market Problem should be Addressed by the Market Itself

November 4, 2015

China Jingdong said it had sent out a letter of complaint to a Chinese antitrust supervision authority, and formally asked it to investigate its rival Alibaba. The complaint letter relates to provisions of SAIC, including prohibiting the electronic business platform to limit or prevent the merchants on its platform to participate in promotional activities of other platforms. The regulations took effect from October.

Jingdong claimed in its statement that it had continued to receive information from the merchants that reflected Alibaba Group forced the merchants to make "alternative" choice in the "double-eleven" promotion activities, that is if the merchant had chosen to participate in the promotion activities of Tmall main venue, it was not allowed to participate in activities of other platforms, and for those who had already entered into a collaboration intention with other platforms, they were required to exit the business, otherwise they would be punished or sanctioned in traffic flows and resource position, which resulted in that the merchant cannot participate the "double-eleven" promotion activities of other electronic business platforms.

Alibaba responded at the first time that for the issue of competition, the ultimate solution was to allow consumers to choose, the market problem should be addressed by the market, and it would continue to take its price advantage to the end. "It would be busy enough to report this and report that. In fact, for the issue of competition, the

final solution is to allow consumers to choose." An Alibaba insider said, service quality, price, logistics were the natural result of the enterprise strength, any competition must face reality. That insider said Ali will continue its price advantage to the end and market issues should be addressed by the market itself.