CHINA

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New supplementary Anti-Monopoly Law regulations

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On 1 February 2011, several sets of new regulations covering monopolistic activities came into effect in China. The previous focus of Anti-Monopoly Law enforcement was on concentration of undertakings. The new regulations clarify guidelines concerning monopolistic agreements and abuse of dominant market position. They also set out rules that address administrative entities that restrict or eliminate competition by abusing their authority. The regulations were issued by the State Administration of Industry and Commerce and the National Development and Reform Commission (NDRC).

Monopolistic agreements

The first business operator to provide material evidence which enables the initiation of an investigation and business operators who play a key role in identifying monopolistic agreements can be exempted from punishment as long as they fully cooperate with the investigation. Other whistleblowers who were complicit in the monopolistic behaviour may have their punishment reduced.

The NDRC rules prohibit competing business operators from reaching fixed or variable monopoly pricing agreements, including:

- fixed or variable commodity price levels;
- fixed or variable price ranges;
- fixed or variable handling fees, discounts or other fees which influence price;
- the use of an agreed price as the basis of a transaction with a third party;
- an agreement to use a standard formula to calculate price;
- an agreement whereby no price change is made without the consent of other business operators; and
- any other concealed effort to fix or change prices.

In addition, business operators may not reach an agreement with a trading partner to fix the resale price of goods or limit the minimum resale price of a commodity.

Abuse of dominant market position

The new NDRC regulations also prohibit business operators with a dominant market position from:

- selling commodities at unfairly high prices or buying commodities at unfairly low prices;
- selling goods below cost for the purpose of squeezing out competitors;
- setting the sale price too high or the purchase price too low to conceal a refusal to trade with trading partners;
- adding unreasonable fees to the price at the time of transaction;
- with regard to the transaction price, discriminating against trading partners who offer similar business terms.

Penalties

Business operators who abuse a dominant market position or engage in a monopolistic agreement will be ordered to stop their illegal activity and will have their illegally obtained income confiscated. They are also subject to a monetary penalty of between one and 10 percent of the previous year's sales.

Administrative abuse of authority to restrict or eliminate competition

The new provisions prohibit administrative authorities from restricting an entity or individual from dealing in, purchasing or using commodities provided by a business operator. Restrictions disguised as redundant inspections or that expressly require, imply, reject or delay the granting of an administrative licence are also prohibited.

The NDRC is responsible for investigating administrative authorities that: 1) force business operators to engage in monopolistic pricing behaviour; 2) enact rules which eliminate or restrict price competition; and 3) set discriminatory charges, implement discriminatory fee standards or stipulate discriminatory prices against non-local commodities.

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