

Examining Recent Trends in International Antitrust Enforcement

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Antitrust enforcers in China – Making up for lost time

Chinese antitrust enforcers are getting serious. Shocked industry participants are getting the impression that antitrust agencies in China want to do within a few months what others, especially the US and Europe, have taken 30 years to accomplish. Experts are particularly concerned that China's antitrust enforcement agencies have unfairly hit foreign companies more than China's own entities, suggesting that the country may be unfairly disciplining new market entrants.

On June 17, 2014, the Anti-Monopoly Bureau of China's Ministry of Commerce (MOFCOM) blocked the formation of a strategic alliance between the world's largest ocean container shipping companies, which are all based in Europe—A.P. Møller–Mærsk, Mediterranean Shipping Company and CMA CGM, otherwise known as the proposed P3 Network. This was MOFCOM's second blocking decision after its prohibition of Coca-Cola's proposed \$2.5 billion acquisition of Chinese juice and beverage company Huiyuan Juice Group in 2009. MOFCOM has sole jurisdiction for merger control enforcement among China's three competition enforcement agencies.

When it comes to cartel enforcement, the Chinese National Development and Reform Commission (NDRC) is authorized to enforce prohibitions against pricing-related monopoly agreements, while the State Administration for Industry and Commerce (SAIC) is in charge of policing all other monopoly agreements. What are catching much attention lately are the ongoing investigations of some 1,000 domestic and foreign companies by the NDRC. The NDRC started investigations in 2011, after media reports in China stated that Chinese buyers were charged more than customers in other regions of the world. Since July 2014, this industry-wide probe has triggered price cuts of services, vehicles or spare parts at many western automakers.

After Daimler had announced price cuts for more than 10,000 spare parts in China, its Shanghai offices were raided on August 4, 2014. These raids came as a surprise, yet it seems that conducting raids before—or even during—an ongoing investigation is becoming an increasingly common method used by Chinese agencies. Other carmakers were raided as well, including Volkswagen's Audi offices, and many others are being investigated, such as Mercedes Benz, BMW, Jaguar Land Rover, Chrysler, Toyota, Honda and General Motors. Most of them have already reduced car and part prices since investigated by the NDR. On August 12, 2014, Audi accepted an antitrust fine of US\$40 million. Other US manufacturers, as well as some car salesrooms and dealers, will also face fines, and 12 Japanese auto part makers also received fines of approximately US\$201 million

These enforcement actions follow a series of other high-profile price investigations. In 2013, the NDRC launched enforcement actions against vertical agreements, with a special focus on resale price maintenance (RPM) schemes. Local offices of the NDRC imposed substantial sanctions on two state-owned liquor companies because of RPM practices. In addition, the NDRC fined six milk powder manufacturers for imposing an RPM restriction on distributors. Nine Chinese and international milk powder companies have supposedly entered into illegal RPM arrangements.

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In May 2014, NDRC branches in Beijing, Shanghai and Guangdong imposed fines against the optical industry in China because of illegal RPM agreements. Certain manufacturers of glasses and contact lenses, including companies from the U.S., Japan and Germany, were fined a total of about \$3.2 million.

On July 28, 2014, around 100 officials from nine provincial branches of the SAIC raided Microsoft's offices in four different locations in China. These issues have arisen out of an investigation responding to complaints by other companies concerning alleged bundling and other issues related to Microsoft's products.

High risk of extradition to the US

Another issue being heavily discussed lately is the increasing risk of extradition to the United States of individuals accused of antitrust violations. The US Department of Justice (DOJ) is increasingly very active in investigating international cartels, which is largely due to its wide-ranging investigation into the international auto parts industry. Since 2011, 27 companies have agreed to plead guilty in the auto part saga and paid over \$2.3 billion in criminal fines, while 36 executives have been charged with criminal violations (25 guilty pleas, with 22 sentenced to serve prison time).

On April 4, 2014, an Italian national and former executive of the rubber hose manufacturer Parker ITR was extradited from Germany to the US. This was the first successfully litigated extradition on antitrust charges. Three weeks later he pleaded guilty; he will serve a total of two years in prison with credit for the nine months and 16 days he was held in the custody of the German government pending his extradition. No matter which product or service is under investigation, individuals clearly face an increased risk of extradition to the US.

EU: High fines for abusing dominance, pay-for-delay and gun jumping

On June 12, 2014, the European General Court handed down its judgment on Intel's appeal against the European Commission's fining decision from 2009, finding that the chip maker had abused its dominant market position in the supply of x86 central processing units by paying financial incentives or rebates to customers. The fine of \$1.44 billion (€1.06 billion) was the highest-ever fine imposed for an antitrust infringement in the EU.

On July 9, 2014, the European Commission imposed fines totaling €427.7 million (US\$ 580 million) on French pharmaceutical company Servier and five generic drug manufacturers based on Servier's acquisition of alternative technologies for the alleged purpose of blocking competitive access and certain patent infringement settlements between Servier and the generics. This allegedly had the effect of delaying entry of generic versions of Servier's branded perindopril products in the EU.

And on July 23, 2014, the European Commission imposed a fine of €20 million (\$26.9 million) on Marine Harvest ASA, the leading salmon farming and processing company in the EEA, for acquiring its rival Morpol without having received prior authorization.

All of the enforcement actions mentioned above highlight the determined efforts of agencies around the world to significantly fine companies that do not comply with antitrust laws. In order to avoid ending up in a similar situation, multinational companies should always re-evaluate their business models, pricing policies and interactions with competitors, and ensure that their antitrust training and compliance programs are up-to-date and in active practice throughout the company.

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