

China Law Update

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Two Anti-Monopoly Cases Are Settled in China

Since the Anti-Monopoly Law of China (the "AML") came into effect in August 2008, attention has been focused on its enforcement and effect on the Chinese market. While the public doubts the government has motivation in enforcing the law robustly against state-owned giants, individuals and private firms have been actively bringing private actions in court against these business giants. Chongqing Insurance Association, China Mobile, China Netcom, Baidu, Shanda Interactive Entertainment, and Sinopec have been defendants in the first batch of anti-monopoly litigations.

Two cases settled in October

The anti-monopoly case brought against China Mobile has been settled, according to Zhou Ze, the plaintiff in the case and a lawyer in Beijing. Zhou Ze filed suit in Beijing alleging that China Mobile abused its dominant market position by charging extra monthly fee for contractual plans which provide essentially the same service as pre-paid plans. Zhou Ze claimed that China Mobile applied dissimilar prices to counterparties with equal standing and imposed unreasonable trading conditions without justifiable cause, and thus was in violation of Article 17 of AML. Zhou sought compensation for 1200 yuan for the additional monthly fees he was charged for the last two years and termination of the different charges.

China Mobile, the largest Chinese mobile carrier, has agreed to pay 1000 yuan to settle the law suit without accepting liabilities. The settlement is regarded as a victory in challenging the state-owned business giants and, according to Zhou Ze, many China Mobile users want him to represent them in similar cases.

In Shanghai, the Shanghai No. 1 Intermediate People's Court has dismissed a law suit brought by Beijing Sursen Electronic Technology Co. against Shanda and Shanghai Xuanting Entertainment Information Technology on the grounds that the plaintiff did not provide sufficient evidence to prove its allegations. The court also found that the defendants were justified in protecting their intellectual property rights by asking their commission writers to stop writing similar works for Sursen. The Court's decision, alleged to be the first decision in a private damage suit under AML, has encouraged dominant firms to properly protect their intellectual property rights and, to some extent, has eased worries that AML may interfere with the protection of intellectual property rights.

Conclusion

It is not clear at this stage whether a flood of anti-monopoly litigations will emerge and how private actions will alter corporate behaviors in China. In any case, detailed rules and technical definitions are needed to provide further guidance in the enforcement of AML. Now that the Ministry of Commerce issued a regulation defining "market" under AML in July, the People's Supreme Court plans to draft an interpretation about detail rules of civil procedure in antitrust cases.

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