

First Cartel Fines in China Following New Regulations

February 25, 2011

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China's State Administration for Industry and Commerce has imposed the first fines for violation of the country's Anti-Monopoly Law on a concrete cartel. The swift action indicates business operators should anticipate more widespread and vigorous investigations by the newly empowered Chinese competition regulatory authorities.

Within weeks of the promulgation of the new regulations clarifying and extending the enforcement powers of China's anti-trust authorities, the country has taken its first action to sanction partitioning of markets. According to a post on the website of the State Administration for Industry and Commerce (SAIC) on 26 January 2011, fines have been imposed on a concrete cartel under the Anti-Monopoly Law (AML) in Jiangsu Province near Shanghai. The local branch of SAIC has fined the Committee for Concrete (which belongs to the Lianyungang City Construction Material and Machinery Association) RMB 200,000 for illegally dividing the concrete market.

The local branch of SAIC in Lianyungang city received "whistleblower" information from construction companies alleging that the Committee for Concrete forced its member concrete manufactures to honour an "agreement" in which the signatories can not conclude a contract with buyers independently. The local branch took immediate and decisive action regarding this information. After a preliminary study on the jurisdiction and illegality of the behaviour in question, the local branch of the SAIC reported its findings to its superiors at the provincial level.

The Administration of Industry and Commerce of Jiangsu formed a special investigation team (Team) with members carefully chosen from all its local branches for the investigation. It was reported that the Team conducted on-site investigations along with other (unspecified) means to obtain evidence. It was not until 200 days later that the Team had finally collected sufficient evidence for their investigation.

The Team found that in March 2009, the Committee for Concrete organized (required) 16 premixed concrete manufactures to abide by various agreements such as the Self-Disciplined Regulations for Premixed Concrete Manufactures, Regulations of Inspection and Punishment together with other agreements (Self-Discipline Agreements) and conspired to monopolize the premixed concrete industry through coordination between its members. Further investigations revealed that in order to implement the Self-Discipline Agreements, the Committee

for Concrete partitioned the market and sold zones of control to member manufacturers by making assessments of their production lines, cement mixers and pumping equipment.

In the period leading up to August 2010, the Committee held several conferences in which the distribution of construction projects, punishment for disobeying the rules and so forth were believed to have been discussed. It is reported that the Committee may also have had a role in preventing construction projects such as the Lianyungang Tourism Building, International Conference Centre, Zhaoyang Residential District Displacement and Resettlement, as well as other projects. This was done by stopping members from reaching sales agreements independently.

With this evidence the Administration of Industry and Commerce of Jiangsu Province fined the Committee RMB 200,000 and ordered the Committee to immediately cease its illegal behaviour.

Horizontal Monopoly

China's AML prohibits certain horizontal agreements between competing business operators. In Article 13 of the law, dividing the sales market (along with other behaviour), is explicitly prohibited. Industry associations that engage in the conduct listed in Article 13, by soliciting or organizing their members to agree to divide up markets, are also subject to sanctions under the same law. However, such monopoly agreements may be permitted in certain circumstances, as outlined in Article 15 of the AML, when the transaction is likely to benefit, but not reduce, competition. Examples are agreements to improve technology or develop new products, or an agreement to reduce costs. These exceptions did not apply in this case and the Committee was fined under Article 13 of the AML for dividing up the market.

It is important to note that the flurry of recently enacted specific rules issued by SAIC and National Development & Reform Committee (NDRC) gave more clarity to the application of horizontal monopoly rules. (See [China to Enforce Anti-Monopoly Law Vigorously](#) for more information.)

Significant Move

There has been criticism of the SAIC and NDRC, two of the tripartite AML enforcement bodies, for not actively enforcing the competition aspects of the AML. Meanwhile, the Ministry of Commerce has seen increased number of merger control filings (concentration is within the jurisdiction of the Ministry of Commerce). This may be attributable to the fact that in the absence of clearer regulations such as those just enacted, the NDRC and SAIC felt somewhat restrained. The SAIC and the NDRC have been prone to rely on the Anti-Unfair Competition Law and Price Law, which were released long before any controversies arose concerning their enforcement of the AML, particularly cartel activity.

This case shows a changing of attitude as Lu Ningwang, head of Anti-Monopoly and Anti-Unfair Competition Department of SAIC, pointed out that it was a good start in terms of AML enforcement and would set a model precedent to warn against illegal activity by market players. Although there are few clues as to how the SAIC and its subsidiaries obtained their evidence apart from the on-site investigation, it appears that authorities are developing sophisticated methods to efficiently produce crucial evidence for prosecution. Now with the newly published rules relating to anti-monopoly agreements and abuse of dominant market position, business operators should anticipate more widespread and vigorous investigations by the Chinese competition regulatory authorities.

Companies that have, until now, taken a relaxed attitude to enforcement of the anti-trust rules under the AML, or that have delayed taking steps to comply with China's competition rules, should view this latest action by the SAIC as a wake-up call. Companies need to immediately address the potential issues to avoid being part of the headlines for the next AML enforcement action. An assessment or audit of AML compliance and, if any potentially illegal activity is found, consideration of applying for leniency leading to immunity from fines, are strategies that can be used in the right context.

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