

China Announces First Administrative Anti-Monopoly Case

August 22, 2011 by Michael X.Y. Zhang

On July 27, 2011, China's State Administration for Industry and Commerce ("SAIC") posted on its website information on the first anti-monopoly case regarding abuse of administrative power to eliminate or restrict competition.

The decision resulted from an unnamed city in China's Guangdong province having issued an order requiring the use of GPS services of a private company to monitor the transportation of all hazardous goods in the city. The Guangdong Provincial Administration for Industry and Commerce ("Guangdong AIC") investigated after receiving complaints from competitors, and concluded that the specific administrative order constituted an abuse of administrative power under the Anti-Monopoly Law of the People's Republic of China ("AML"). The Guangdong AIC sought the guidance of the SAIC, then made a recommendation to Guangdong's provincial government to correct the abuse. On June 12, 2011 Guangdong's provincial government ruled that the order violated Articles 8 and 32 of the AML (namely, abuse of administrative power to eliminate or restrict competition).

Effective August 1, 2008, the AML is China's first comprehensive competition law. Like other comprehensive competition laws, the AML addresses the prohibition of anti-competitive monopoly agreements, the prohibition of the abuse of a dominant position, and merger control. Additionally, the AML covers the prohibition of administrative monopolies, addressing the anti-competitive effects of the misuse of government power. Such specific rules against administrative

monopolies reflects the solid determination of the Chinese government to enforce the AML on those monopolistic conducts resulting from administrative decisions or orders at the local government level, which were quite common in the past.

Although this administrative anti-monopoly case is the first concluded by the SAIC, greater attention is being brought to the investigation and enforcement of administrative abuses of power. On February 1, 2011 the SAIC issued several new regulations implementing China's AML, including a regulation specifically with respect to prohibiting the abuse of administrative power to eliminate or restrict competition. The regulation provides authorities clearer indications as to what may result in a breach of the AML, and what may perhaps be acceptable justification for conduct that may result in a breach.

In China, many public bodies regulate or engage in commercial activities, and the new regulations under the AML set out a number of provisions that limit how public bodies exercise their powers. Administrative bodies are prohibited from misusing their powers to restrict products from other regions of China, such as through price discrimination. Administrative bodies also may not force a business operator to conduct itself so as to be in breach of anti-monopoly laws and regulations. It remains to be seen whether the new regulations will result in the publication of further cases with respect to the abuse of administrative power.

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