

China NDRC Fines Two Pharmaceutical Distributors for Monopolistic Practice

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Recently, China's National Development and Reform Commission (NDRC) imposed large fines on two pharmaceutical distributors. This move indicates the enforcement agency, which supervises price-related monopolistic practices, is beginning to take a more active role in enforcing the country's Anti-Monopoly Law.

China's National Development and Reform Commission (NDRC), the enforcement agency that supervises price-related monopolistic practices, imposed huge fines on two pharmaceutical distributors recently. This news was released 14 November 2011, just days after the NDRC revealed its investigation into suspected anti-competitive behaviour of China Unicom and China Telecom, two giant, state-owned telecommunication companies. (See [China Cracks Down on Anti-Competitive Practices of Major State-Owned Enterprises](#) for more information.) China's Anti-Monopoly Law has been effective for more than three years. The Ministry of Commerce, another agency responsible for merger control aspects of the Anti-Monopoly Law, has been very active, while the NDRC has engaged in only limited enforcement activity. Now it seems the NDRC is beginning to bear its teeth.

In the NDRC's most recent action, two pharmaceutical distributors, Shandong Weifang Shuntong Pharmaceutical Co. Ltd. and Weifang Huaxin Medicine Trading Co. Ltd., were found to have dramatically raised the price and monopolized the supply of promethazine hydrochloride, a raw material of the compound reserpine, which is a medicine included in China's essential drug list for high blood pressure treatment. Annually in China more than 10 million patients, mostly low- and middle-income earners, consume in total 8 to 9 billion reserpine tablets.

According to news released on NDRC's website on 9 June 2011, the two distributors concluded an exclusive distribution agreement with the only two producers of promethazine hydrochloride in the Chinese market. The agreements stipulated that the two producers of promethazine hydrochloride could not supply the products to any third parties without their approval. After controlling the supply for promethazine hydrochloride through such exclusive arrangements, the two distributors raised the price from less than RMB 200 to a range of between RMB 300–1,350. Many producers of compound reserpine tablets could not afford such price hikes and were forced to cease production in July 2011. This endangered the supply of compound reserpine tablets and resulted in a serious price increase.

The announcement by the NDRC does not make it clear as to the exact basis for imposing sanctions. It seems that the two distributors were considered dominant on the market for the supply of promethazine hydrochloride and could have been found to have abused that dominance by selling at unfairly high prices, contrary to Article 17 of the Anti-Monopoly Law. There is also a possibility the NDRC considered that each of the exclusive supply agreements was an agreement between competitors limiting sales of promethazine hydrochloride contrary to Article 13 of the Anti-Monopoly Law.

Pursuant to the Anti-Monopoly Law, NDRC ordered the two distributors to terminate the exclusive agreements immediately and imposed fines of RMB 6.877 million (USD 1.08 million) on Shuntong (including confiscated illegal gains of RMB 3.77 million) and RMB 152,600 on Huaxin (including confiscated illegal gains of RMB 52,600).

Those doing business in China should be particularly careful when entering into exclusivity arrangements with suppliers and distributors. In this case, another regulator under the Anti-Monopoly Law, the State Administration for Industry and Commerce (SAIC) could also have taken action against the agreement because it would have breached Article 7 of SAIC Regulation 53/2010, which prohibits competitors from jointly restricting a supplier from doing business with other competitors. Further, once the distributors became jointly dominant on the market for the supply of the raw material, Article 5 of SAIC Regulation 54/2010 would, unless there was good justification, prohibit either of the distributors from requiring the suppliers to deal exclusively only with one of the distributors.

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