

China's Latest Enforcement of the Anti-Monopoly Law and Price Supervision/Regulation

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China's National Development and Reform Commission (NDRC) recently outlined its latest efforts in the enforcement of the Anti-Monopoly Law and price supervision. This newsletter summarizes the noteworthy information NDRC disclosed.

On 19 February 2014, China's National Development and Reform Commission (NDRC) held a press conference in Beijing to outline its latest efforts in the enforcement of the Anti-Monopoly Law and price supervision. The NDRC disclosed a lot of noteworthy information at that press conference, a summary of which is set out below.

Notable Anti-monopoly and Price Cases

Qualcomm and IDC

NDRC confirmed that Qualcomm and IDC both have been investigated for price discrimination by abusing their dominant market positions. NDRC commenced its investigations against IDC in May 2013. Recently, NDRC has received an application for suspension of investigation from IDC, which indicates that IDC has made some

commitments to carry out improvements in the future with respect to certain issues under investigation. The NDRC will study the application and render a decision in accordance with the law.

In the Qualcomm case, NDRC conducted dawn raids on the company's Beijing and Shanghai offices simultaneously in November 2013 in order to collect evidence.

Thereafter, they consulted with Chinese and overseas companies in related industries, such as mobile manufacturing and chip manufacturing. Currently, the case is still under investigation and in the early stages.

Commercial Banks

The NDRC organized a team of nearly 1,000 staff to inspect banks, including China's "Big Five" state-owned banks, other commercial banks and urban/rural credit cooperatives, since September 2013. As of the date of the news conference, NDRC has ordered 64 branches of different banks to return arbitrary charges they had imposed in the amount of RMB 409 million, and imposed fines of RMB 416 million on those banks. The investigation is still ongoing, and NDRC will formulate measures to regulate bank charges in the future.

Telecom Companies

NDRC commenced investigations into telecom giants China Telecom and China Unicom in 2011 for abuse of dominant market position. The investigations focused on two issues: refusal to deal and price discrimination. Thereafter, the two telecom giants submitted applications for suspension of investigation at the end of 2011 and undertook rectifications, including increasing internet speeds and decreasing internet fees. Based on the latest rectifying reports submitted by the two telecom giants, NDRC indicated there have been some improvements. Nevertheless, it will conduct further studies and evaluations to decide if the two companies have fully delivered on their commitments and make a final decision.

Auto Parts Industry

NDRC has collected information and conducted external surveys on the auto parts industry. However, a formal investigation has not yet been launched.

Milk Powder Companies

At the news conference, a journalist pointed out several news reports indicating that since 2013 some milk powder companies, including Friso, were quietly increasing their prices, and questioned if NDRC would monitor whether milk powder companies have fulfilled their commitments after the Anti-Monopoly Bureau issued its largest fines of RMB 670 million against some of them. (See "[Resale Price Maintenance in China: Enforcement Authorities Imposing Large Fines for Anti-Monopoly Law Violations](#)" for more information).

In response, NDRC indicated it has been working on post-decision supervision. In February 2014, a team led by an NDRC director visited and investigated several milk

powder companies. The NDRC will continue to monitor the implementation of their commitments and rectification measures.

Fine Standards

According to China's Anti-Monopoly Law, the NDRC is entitled to impose fines, at its discretion, ranging from 1 per cent to 10 per cent of a firm's turnover in the previous financial year. In the future, NDRC will formulate implementation measures to regulate standards in relation to fines so as to improve transparency. Currently, NDRC imposes fines based on the following considerations:

1. To what extent the market is damaged
2. How cooperative the company is during investigation (e.g., furnishing key evidence)
3. How the company rectifies its violations

Work Summary

Last year, NDRC and its competent local branches launched more than 34,400 investigations. RMB 632 million was ordered to be returned to consumers, RMB 907 million in illegal gains were confiscated and RMB 1.58 billion in fines were imposed. NDRC will follow up on the commitments and rectifications the investigated companies have made.

NDRC acknowledged that it has faced many difficulties while trying to improve the enforcement environment, including the scarcity of manpower and experience, and the absence of an anti-competition culture and policies. Notably, NDRC revealed it is planning to recruit 200 staff members for anti-monopoly work. Twenty of those will be located in NDRC's Beijing headquarters, while the rest will be sent to NDRC local offices.

Miscellaneous

NDRC also indicated that the incentive provided to whistleblowers has increased from RMB 2,000 to RMB 5,000, and for those who provide evidence relating to extraordinarily serious violations the incentive could be up to RMB 10,000. NDRC now also rewards efforts to improve the case-reporting information system. Although the amount of the award is insignificant, this change may encourage whistleblowers—who are the main sources of NDRC's investigations—to some extent.

The three antitrust enforcement agencies in China (the NDRC, the Ministry of Commerce, or MOFCOM, and the State Administration for Industry and Commerce, or SAIC) may be integrated into one in the future, which is a trend around the world. However, the current structure has its historic rationale and is reasonable because the three agencies regulate three different types of conduct (price-related investigation under NDRC, anti-competition enforcement under SAIC and merger control under MOFCOM). Therefore, the current structure may be in place for a

while. It is also worth noting that the SAIC has set up an Anti-Monopoly Commission, which coordinates these three agencies.

Alex An, Bryan Fu and Cook Xu also contributed to this article.

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