Overview of Anti-Monopoly Legislation in China

Submitted by: China
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The views expressed here are of my own and cannot be attributed to the Ministry of Commerce, PRC.
The Development of China’s Competition Legislation

1st. Stage Before the “Reforming and Opening up” policy in 1978

“Regulations on Development and Protection of Competition”(1980):

“competition must be introduced by breaking down regional blockades and departmental barriers. No locality or department is allowed to block the market. No locality or department should impose any ban on entry of goods made in other places. Localities should ensure that raw material be transferred out according to state plans and must not create any blockade. Departments in charge of industry, transport, finance and trade must revise any part or parts of their existing regulations and systems which impede competition so as to facilitate competition.”

The first official document about competition policy in China.
3rd. Stage, Post 1992: Towards building “a socialist market economy”; diminishing roles of the “visible hand”. Especially after 2003: establishing a socialist market economy “from all aspects”.


“Provisional Rules for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors” (the “Provisional M&A Rules”).

Drafting the AML (1994-present)
Legislations On Cartel

● **Price Cartel**:
  - Price Law
  - Regulations on International Shipping

● **Bid-rigging**:
  - Anti-Unfair Competition Law
  - Law of Bidding
Legislations on abuse of dominance

- **Predatory pricing:**
  - Anti-Unfair Competition Law Art.11
  - Price Law Art.14
  - Regulations on Telecommunication Art.42

- **Tying:**
  - Anti-Unfair Competition Law Art.12
  - Regulations on Telecommunication Art.41
- **Price Discrimination**
  Price Law Art. 14
  Electric Power Law Art. 26

- **Refusing to Deal:**
  Regulations on Telecommunication Art. 17
  Electricity Law Art. 26

- **Forced Transaction:**
  Anti-Unfair Competition Law Art. 6
  Regulations on Telecommunication Art. 41
Prohibition on Abuse of IPR:

**Contract Law** Art. 329

**Regulations on Technology Importation Contract** Art. 9

**Patent Law** Art. 51
Legislations on M&A

- **Company Law** Art. 183
- **Securities Law** Chap. 4
- **Rules on Merger and Acquisition of Domestic Enterprises by Foreign Investors (issued in 2003, amended in 2006)**
Prohibition on administrative monopoly

- Regional blockades & Sector/industry monopolies
- Regulations on Development and Protection of Competition (1980)
- Anti-Unfair Competition Law Art. 7
- Legislations of State Council in 2001
Comments on Current Anti-monopoly Legislation

- Lack of a unified and complete system of anti-monopoly law
- Contents are more of principles, while lack of practicability
- Current regulations are of low level, not authoritative enough
- Lack of legal liabilities and measures of punishment
Competition policy as a highlighted goal

- Realizing the important role played by Competition in market economy, China attaches great importance to the drafting of Anti-Monopoly Law and takes it as a priority in establishing a single, open, competitive, and orderly modern market system. On various government occasions, competition policy was earmarked as one of the most important goals of China’s economic reform.
Drafting of Anti-monopoly Law

- Initiation in 1994
- MOFCOM submitted the draft to State Council in 2004
- State Council submitted the draft to the Standing Committee of NPC
- The Standing Committee of NPC made the first reading of the AML draft in June 2006, and made the second reading in June this year. Hopefully China will adopt the AML this year.
- The amendment will be made in Anti-Unfair Law and Price Law according to the legislation plan of NPC
The process of AML legislation is very transparent. Relevant parties from U.S., EU, OECD expressed their comments on the draft.
Guidelines and Principles of Drafting Anti-monopoly Law

- Based on the domestic status of China; adapting to the level and stage of China’s economic development
- Reflecting the international rules of practice; absorbing and referring to the experience and best practice of other countries
- Reflecting the policy of opening-up; adjusting to the trends of entry to WTO and economic globalization
- Reflecting both fundamentality and flexibility
The main provisions of the AML Draft

- Prohibition on monopolistic agreement
  - Prohibition on abuse of dominance
  - Concentration control
  - Prohibition on abuse of administrative power to eliminate or restrict competition
  - Investigation on monopolistic conducts
  - Legal liability
Anti-monopoly Enforcement by Ministry of Commerce

- MOFCOM was responsible for drafting AML.
- MOFCOM has established an Anti-monopoly office in August, 2004.
- MOFCOM is doing merger control according to the M&A rules.
Future Challenges

- Anti-monopoly implementation
- How to bring the internationally accepted rules into China’s context.
- Serious understaffing
- Capacity building on both legislation and enforcement
Thank you!