

Anti-Competitive Conducts: China Experience

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Three Parts

- I. Background: The initial stage and the introduction of competition
- II. Anti-competitive conducts in China
- III. Current situation of Competition legislation in China
- Conclusion

I. Background: The initial stage and the introduction of competition

- **A. The initial stage**
- Before the reform, China's economic system can be called as "highly concentrated planning economy", which has two obvious features:
 1. Almost all non-agriculture industries were state-owned
 2. Private investments were prohibited in almost all non-agriculture industries
- From a competition point of view, the centrally planned economy was actually a state-monopolized economy as a whole. No real competition existed, needless to say "anti-competitive business conducts"

I. Background: The initial stage and the introduction of competition

- **B. The reform process and the introduction of competition**
- China began its economic reform in 1978. The reform process is basically a process of breaking up state monopoly and introducing competition.
- Measures for breaking up monopoly and introducing competition were firstly (in early 1980's) adopted in ordinary manufacture sectors, such as food, textile, electronics, etc. There are mainly two kinds of measures:
 - 1. Inviting and supporting private investors to enter into these sectors, so that competition between private firms and SOEs was introduced.
 - 2. Transforming SOEs in these sectors, including separating social management functions from SOEs, pluralizing the ownership structure of SOEs and establishing corporate governance in SOEs

I. Background: The initial stage and the introduction of competition

- **B. The reform process and the introduction of competition**
- Much later (late 1990's), those measures were gradually adopted in those key energy industries, public utilities and natural monopoly sectors, such as oil, gas, electricity, civil aviation, city transportation, telecommunication, water, finance, railway, post, etc.

I. Background: The initial stage and the introduction of competition

- **C. Current situation of competition**
- In ordinary manufacture sectors, generally speaking, competition is sufficient and effective, and indeed most sectors face over-competition.
- But in those key energy industries and public utilities sectors, competition is far from sufficient and effective. For example, in oil and petrochemical industries, telecommunication, and financial sectors, etc, changes are more formally than essentially. Though there are several players in those sectors, those smaller ones are no matches for top ones, competition, therefore, cannot be effective.

I. Background: The initial stage and the introduction of competition

- **C. Current situation of competition**
- Comparatively, competition in sectors of oil, electricity, telecommunication, etc, is more effective than that in sectors of finance, city transportation, etc.
- While reform in railway and post is far behind, for these two sectors are now still state monopolized

II. Anti-competitive conducts in China

- There are two major categories of anti-competitive conducts in China:
 - A. Business anti-competitive conducts
 - B. Administrative anti-competitive conducts
- They are resulted from different reasons and have different significance.

II. Anti-competitive conducts in China

- **A. Business conducts**
- There are four kinds of business anti-competitive conducts
- 1. Abuse of market dominance
- 2. Collusion
- 3. Merge and acquisition.
- 4. Unfair or unethical competition business conducts.

II. Anti-competitive conducts in China

- **1. Abuse of market dominance**
- Abuse of market dominance in China mainly includes **dumping, tying, resale price maintenance and barriers to market entry**.
- Currently in China, dumping is very rare among Chinese firms; most dumping cases are related with multinational companies.
- But conducts of tying, resale price maintenance and barriers to market entry are very popular and serious. Chinese big firms have been trying various methods to stop new entrants, including spending heavily in advertisement, but generally speaking, business conducts of obstacles to new entrants are not significant and effective. The most serious problem lies in government restrictions.
- While conducts of tying are forbidden by *1993 Anti Unfair Competition Law*, conducts of dumping and RPM are forbidden by a temporary provision issued by the State Development and Reform Commission in 2003.

II. Anti-competitive conducts in China

● 2. Collusion

- Collusion in China includes **agreements to fix price, to limit production and to carve out territory.**
- Since most manufacture sectors face excess production capacity and over competition in China, since late 1990's, many enterprises have been trying to form Cartels to reduce competition.
- For example, in October 2000, CEOs of top color TV manufacturers held a so-called "Top Forum", and decided to limit production volume to stop price decrease. In early 2001, several car manufacturers held a "Top Forum", and declared they would not decrease car prices in the near future.
- But what is worthy to note is, 1) these Cartels are always short-lived, the longest lasted about 30 days; and 2) these cartels are more encouraged than restricted by the government in the previous years. 3) Only price Cartel is clearly forbidden by the aforementioned temporary provision.

II. Anti-competitive conducts in China

- **3. Merge and acquisition**
- Chinese firms, especially those in ordinary manufacture sectors, often use M & A as a means to reduce competition.
- But since the domestic market is so huge and the Chinese enterprises are relative small, up to now, there has been no case of private M & A resulting in real market monopoly.
- So generally speaking, M & A seems not a serious issue, rather, M & A activities are more encouraged by the government than being restricted.

II. Anti-competitive conducts in China

- **4. Unfair or unethical competition business conducts**
- There are six kinds of **Unfair or unethical competition business conducts**:
- **(1) Adopting unfair methods in business transactions**, including feigning others' registered trademark, using the specific name, package, decoration of the famous or noted commodities, using the name of other enterprise or personal name, etc.
- **(2) Commercial bribery**. Using money or other methods to bribe others in order to sell or purchase commodities.
- **(3) Misleading or false advertisement**.
- **(4) Infringing other's commercial secrecy**.
- **(5) Adopting fake or unfair bonus in transaction**.
- **(6) Adopting commercial slander to competitors**.

II. Anti-competitive conducts in China

- **4. Unfair or unethical competition business conducts**
- Though these conducts are not typical anti-competitive conducts, they are more serious than other kinds of anti-competitive business conducts in China, especially in ordinary manufacture sectors and among SMEs, and they do impair the effectiveness of market competition.
- All the above six kinds of conducts are clearly forbidden in the *1993 Anti Unfair Competition Law*.

II. Anti-competitive conducts in China

- **B. Administrative anti-competitive conducts**
- There are mainly three kinds of administrative anti-competitive conducts
- 1. State monopoly
- 2. Complicated examination and approval procedure
- 3. Regional protectionism

II. Anti-competitive conducts in China

- **1. State monopoly.** In railway and post industry, the central government is still both the regulator and the only player of the industries. Private investor is strictly forbidden to enter these sectors.
- **2. Complicated examination and approval procedure.** In sectors of telecommunication, oil and petrochemicals and banking etc., though there are no explicit legal restrictions for private investors to enter, there are very complicated administrative examination and approval procedures, which consist de facto barriers to new comers
- **3. Regional protectionism.** In order to protect interests of enterprises within their territories, local governments often adopt explicit or implicit measures to block products of other regions to enter their market, or limit the marketing of products from other places, or give explicit or implicit subsidies to local enterprises.

II. Anti-competitive conducts in China

- **C. Those two kinds of anti-competitive conducts are resulted from Different reasons and have different significance**
- **Business anti-competitive conducts** are mainly a result of the immature nature of the Chinese market economy, and the incompleteness of competition policies and enforcement system. **While the administrative anti-competitive conducts** are mainly a result of the lag of reform and reorganization in those key sectors, and the backwardness of government reform.
- At present in China, administrative anti-competitive conducts are much more significant and harmful to fair and effective competition. But with the progress of China's economic and political reform, and the rapid development of the Chinese economy, the administrative conducts will become less serious in the future. Instead, the business conducts will become more and more important.

III. Current situation of Competition legislation in China

- A. Since 1990's, China has made quite significant progress in competition legislation
- B. The major laws are 1993 Anti Unfair Competition Law, 1998 Price Law, 2000 Bid and Tender Law. There are also some regulations and rules for specific industries, such as telecommunication and electricity etc.
- C. But in general, these laws and regulations are not systematic and specific enough and have not addressed newly emerging anti-competitive conducts, such as Cartels aiming to limit production and carve out territory.

III. Current situation of Competition legislation in China

- **D.** Chinese government began to draft the Antimonopoly Law as early as 1994. A task force was established and the Draft of China's Antimonopoly Law has been revised many times
- **E.** The key issues facing the drafting work include: the form of abusing market dominant position, the standard and procedure of merger control, the regulations on administrative monopoly, the exception of the Antimonopoly Law, the extraterritorial of the Antimonopoly Law and the relationship between the Antimonopoly Law and the Anti- unfair Competition Law.

? . Conclusion

- A. Currently China has two major categories of anti-competitive conducts, one is business anti-competitive conduct and the other is administrative anti-competitive conduct. They are resulted in different reasons and have different significance to the Chinese economy at present and in the future.
- B. To deal with the business conducts, the major measure should be to complete the legal framework of competition and to enhance the enforcement system.
- C. But to solve the administrative conducts, the right way is to deepen and further promote the economic and administrative reform, including continuing to separate government regulatory function and owner function, and to pluralize the ownership and to establish good governance structure in those monopolized sectors.

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Thanks