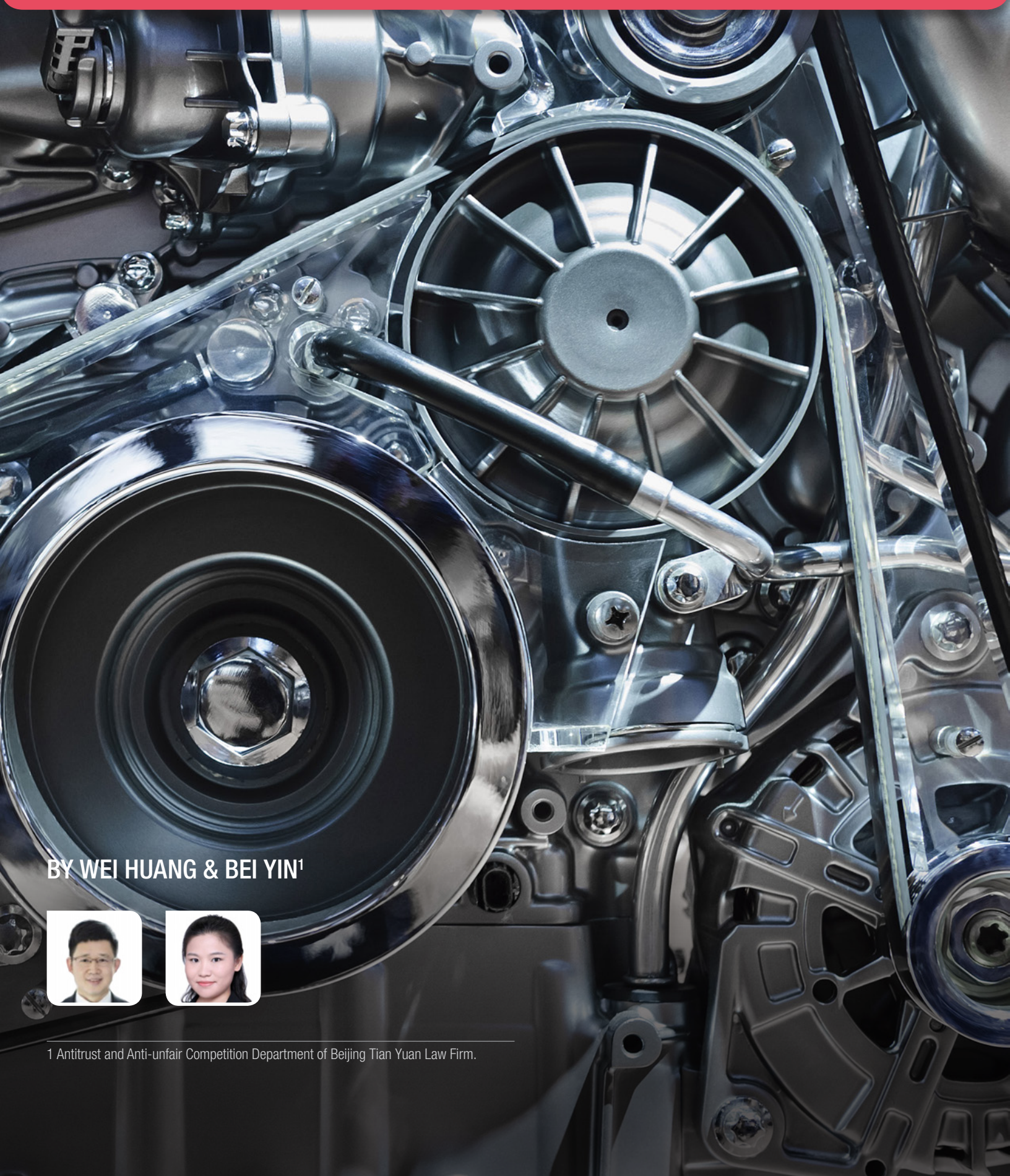


# THE DEVELOPMENT OF ANTITRUST ENFORCEMENT IN CHINA'S AUTOMOTIVE INDUSTRY



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## I. THE AUTOMOTIVE INDUSTRY AND ANTITRUST

The automotive industry has been always an industry where antitrust enforcement activities are relatively intensive.<sup>2</sup> Whether in the United States or the European Union, enforcement actions targeting the automotive industry are by no means rare. This may be attributed in part to the special features of the automotive industry as compared to the other industries, e.g. expensive manufacturing costs, complicated technologies, high safety requirements, and its common status as the pillar industry of a nation.

Due to these special features, the automotive industry is normally capital and technologically intensive, and industrial concentration ratios may be relatively higher. The manufacturing and supplying of spare auto parts is premised with getting hold of relevant technological information of relevant vehicles, and compatibility issue may be found between original components of the vehicle and other non-original components. Additionally, consumers who have invested in car purchases may need to use the original components during car repairing and maintenance, and thus may be more likely to have their cars repaired and maintained at the store where they purchased the cars. Thus, in the automotive industry, it may be relatively easier to emerge the collusion between undertakings in the industry, as according to the conventional economic theory, there appears to be a certain relationship between high market concentration ratio and anticompetitive conduct; as well as the restrictions of carmakers imposed upon spare parts suppliers and consumer choices, which are just the issues concerned by antitrust law/competition law.<sup>3</sup>

The focus of the antitrust enforcement agencies in the U.S. and the EU in the automotive industry is often the collusion between relevant undertakings in the industry and the restrictions imposed by relevant vehicle manufacturers on suppliers of spare parts.<sup>4</sup> Yet, the focus and concern of China's enforcement authority is clearly different.

<sup>2</sup> In the EU, antitrust enforcement actions in the automobile industry include the 2011 Volkswagen Case, the 2003 BMW Case, the 2013 Auto Harness Case, the 2014 Auto Bering Case, etc. In the U.S., antitrust investigations in the automobile industry include the Bridgestone Case, the Takata Case, the Furukawa Electric Case, etc.

<sup>3</sup> In this article, the concepts of "antitrust law" and "competition law" are used interchangeably.

<sup>4</sup> See Shi, Jianzhong & Ma Chenghao "Ou Mei Fan Qi Che Pei Jian Xiao Shou Ling Yu Long Duan Xing Wei de Zhi Fa Jing Yan ji Dui Wo Guo de Qi Shi (The Enforcement Experiences of the U.S. and EU against the Monopolistic Conduct in the Auto Sale Area and the Implications for China)," Vol. 9, Price Supervision and Anti-Monopoly in China (2014).

## II. THE ENFORCEMENT ACTIONS OF CHINA'S ANTITRUST ENFORCEMENT AGENCY IN THE AUTOMOTIVE INDUSTRY

### A. Antitrust Issues in China's Automotive Industry

Monopolies in China's automotive industry are typically reflected by such phenomenon as the excessive profits reaped by imported vehicles, the overly high ratio between car spare parts price and car selling price, and the abnormally excessive prices charged by the car dealerships that provide car sale, car spare parts, after-sale service, and surveys (which in China are called "the 4S stores"), etc.<sup>5</sup> What is behind the phenomenon is not only the influence of relevant undertakings in the automotive industry reaching and the implementation of monopolistic agreements, but also = China's policy and rule for the automotive industry that fails to advance with the times and even conflicts with the Anti-Monopoly Law ("AML").<sup>6</sup>

For instance, manufacturers of import branded vehicles restricting the resale price of branded vehicles may directly lessen or eliminate the price competition between dealers of the same vehicle brand, which may cause the direct effect of maintaining high prices of branded cars. Undertakings who supply spare parts in the automotive industry to reach and implement agreements to fix the price of spare parts also directly elevate car-making costs as well as car repairing costs, thereby increasing car selling prices and repairing price. And the *Implementation Measures for the Administration of Automobile Branded Sales* provide that vehicle brand dealers shall not sell vehicles unless being authorized by vehicle manufacturers<sup>7</sup> and can only engage in business in branded vehicles for which they have been authorized<sup>8</sup> have resulted in the more advantageous position held by the branded vehicle manufacturers relative to their dealers,<sup>9</sup> and laid down the foundation for them to impose such vertical restrictions as limiting the channel of 4S stores to sourcing spare parts, restricting the sales territory of 4S stores, etc.

### B. Actions of China's Antitrust Enforcement Agency in the Automotive Industry

China's Antitrust Enforcement Agency ("AEA") initiated the investigations into China's automotive industry as early as the end of 2011.<sup>10</sup> Yet it was in 2014 when the AEA consecutively punished Audi, Chrysler, BMW, and 12 Japanese spare auto part suppliers that the antitrust enforcement actions came into sight of the public.<sup>11</sup> After 2014, the Jiangsu Price Bureau issued the administrative sanction decision against Mercedes-Benz in April 2015, and dealers of Mercedes-Benz in Suzhou City, Nanjing City, and Wuxi City were fined a total amount of CYN 7.87 million. In December 2016, the Jiangsu Price Bureau again took actions against undertakings in the automotive industry, and this time Shanghai General Motors ("SGM") was punished.

Summarizing the antitrust enforcement actions in China's automotive industry, a finding would be that the main monopolistic conduct penalized is the vertical price restriction imposed by carmakers on their dealers, including carmakers who fix the car resale prices or after-sale service prices, and carmakers who restrict the minimum price for dealers to resell cars/spare parts. In a small number of administrative sanction decisions, the dealers of the same vehicle brand reaching and implementing agreements to fix the prices of car sales are also punished. And

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5 *Id.*

6 Regarding the conflict between China's policy for the automotive industry and the AML, see e.g. Su, Hua & Han, Wei "'Qi Che Pin Pai Xiao Shou Guan Li Shi Shi Ban Fa' de Fan Long Duan Fen Xi (The Anti-monopoly Analysis of the Implementation Measures for the Administration of Automobile Brand Sales)," Vol. 1 China Price (2014); see also the opinion expressed by Professor Wu, Hanhong in "'Qi Che 'Fan Long Duan': Fan de Shen Me (Automobile Antimonopolies: What to Combat?)," News 1+1, August 8, 2014, who expressed that the excessive price charged for high-end autos is related to the Implementation Measures for the Administration of Automobile Brand Sales.

7 The Ministry of Commerce of the People's Republic of China, the National Development and Reform Commission, the State Administration of Industry and Commerce, Implementation Measures for the Administration of Automobile Branded Sales (date of promulgation: February 21, 2005, effective date: April 1, 2005) (Nullified/Repealed), Article 27.

8 *Id.* Article 25.

9 See Zhang, Yanyu "The Research on Anti-monopoly Law in the Chinese Auto Industry," B.E. (Hunan University of Science and Technology) 2013.

10 See "Fan Long Duan Dao Di Da de Shi Shen Me (What Does Antimonopoly Strike?)," Finance\_iFeng, available at <http://finance.ifeng.com/news/special/cqfid/>.

11 Regarding why the antitrust enforcement action in China's automotive industry took a long time to be recognized by the public, see Xiao, Cheng "Zhong Guo Qi Che Fan Long Duan Wei He Zhan Zhan Jing Jing: Zhi Nan Qi Cao Gong Zuo Tuo Le Qi Nian (Why Is the Antimonopoly in the Automotive Industry So Cautious: Drafting of Guidelines Took Seven Years)," *Southern Urban Daily*, June 17, 2015. The author pointed out that "as the interests and conflicts in the industry are complicated, a slight move in one part may affect the situation as a whole, China's automotive industry is young, and monopolistic conduct are often disguised, antimonopoly work in the sector encounter many difficulties and obstacles."

except for the punishment over 12 Japanese car spare part suppliers for they entered in and implemented horizontal monopolistic agreements to fix the prices of spare auto parts, there is no other case to punish vehicle manufacturers (suppliers) for they reach and implement horizontal monopolistic agreements.

*Table 1: Main Antitrust Enforcement Actions in China's Automotive Industry*

Date of Punishment	Undertakings Involved	Illegal Conduct
August 2014	12 Japanese spare auto parts suppliers	Entering in and implementing monopolistic agreements to fix or change the prices of spare auto parts.
August 2014	Chrysler	Chrysler requires its dealers to publish price information based on its recommended resale prices and punishes dealers who make offers at prices lower than the recommended resale prices through phone calls.
September 2014	Audi	FAW-Volkswagen Automotive Sales Co., Ltd. organizes 10 Audi dealers in Hubei Province to reach and implement monopolistic agreements to fix the car selling and car repairing prices. 10 Audi dealers in Hubei Province signed the Price List for the Dealer Union of Wuhan City to reach and implement monopolistic agreements to fixing the selling prices of Audi cars.
April 2015	Mercedes-Benz	Mercedes-Benz restricts the minimum resale prices for Level E and Level S cars and restricts the minimum resale prices of spare parts for its dealers in Jiangsu Province.
September 2015	Dongfeng Nissan	Through sending out business rules, price management measures, and assessment regulations to dealers, Dongfeng Nissan strictly restricts the making of offers by dealers in Guangdong Province and the eventual bid prices. Regarding dealers in Guangzhou City which do not abide the management measures, Dongfeng Nissan imposes punishments on them. Through calling meetings, dealers of Dongfeng Nissan in Guangdong Province reach and implement monopolistic agreements to fix the prices for relevant models of Nissan cars.
December 2016	SGM	SGM restricts the minimum resale prices for Cadillac SRX, Chevrolet Trax, Buick New Exelle, etc.

### III. THE INFLUENCES OF THE ANTITRUST ENFORCEMENT IN CHINA'S AUTOMOTIVE INDUSTRY

#### *A. Approaches to Finding Monopolistic Vertical Price Agreements*

Although the AML explicitly prohibits vertical price monopolistic agreements,<sup>12</sup> with respect to what kind of activities constitute “fixing resale prices” and “restricting minimum resale prices,” for instance, what kind of requirements should the conduct concerned be met, the AML does not provide specific provisions or guidance of what the features of the conduct concerned are. However, the antitrust enforcement in the automotive industry has enriched the understanding of China's AEA regarding vertical price monopolistic agreements and has developed its approaches to find vertical price monopolistic agreements.

For instance, the administrative sanction decision against SGM clearly considered that such activity by vehicle manufacturers that used recommended price was only a name, while in fact it restricted the resale prices, constituted conduct which could be considered reaching and implementing vertical price monopolistic agreements. Specifically, although judging from the texts of the price documents sent out by SGM to

<sup>12</sup> Standing Committee of the National People's Congress, The Anti-monopoly Law of the R. R. China (promulgation date: August 30, 2007, effective date: August 1, 2008), Article 14, “The following monopolistic agreements between undertakings and trading counterparts shall be prohibited: 1) fixing the price of commodities for resale to third party; 2) fixing the lowest price for resale of commodities to third party; and 3) any other monopolistic agreements as deemed by the AEA of the State Council.”

dealers, the resale prices seemed to be only recommended prices, in actual execution SGM required dealers to communicate timely with the regional sales center when they found that the actual prices of vehicles provided by dealer(s) to end-consumers were not consistent with the “expectation,” and in that circumstance the regional sales center would organize conversations with the relevant dealer(s), getting the picture of the actual situations and making corresponding adjustments.<sup>13</sup>

For another example, in the administrative sanction decision against Mercedes-Benz, the Jiangsu Price Bureau considered that the requirement of the manufacturer which required that the discount rate of 2013 E level domestic Benz should not exceed 12 percent may also incur the effect of the maintenance of resale prices.<sup>14</sup> In other words, through indirect means such as restricting the maximum discount rate, the resale prices can be maintained as well.

It can be understood that the antitrust enforcements in China’s automotive industry have exerted a direct and profound influence over the approaches to find vertical price monopolistic agreements, that is, focusing on the substance rather than confining to the specific manifestation of conduct. In fact, the *Antitrust Guidelines for the Automotive Industry* (Draft for Deliberation) (hereinafter “Guidelines”) which are drafted on the basis of synthesizing the antitrust enforcement experiences in the automotive sector have been the most systematic document which provides guidance for finding vertical price monopolistic agreements in China. The Guidelines clearly provide that vertical price monopolistic agreements may come in the form of direct restrictions, or may come in the form of indirect restrictions, for instance, fixing the dealers’ profit margin and discount level. There may be various manifestations of vertical price monopolistic agreements. Vertical monopolistic agreements may be concluded by means of business policy, circular, communication, and notice. The AML is concerned with the effect rather than the form of the conduct.

## **B. Restricting Intra-Brand Competition as Horizontal Monopolistic Agreements**

As discussed, when the AEA punished Audi and Dongfeng Nissan, it considered that the dealers of the same brand reached and implemented horizontal monopolistic agreements when they fixed the selling prices of relevant models of branded vehicles. However, when the Shanghai No. 1 Intermediate People’s Court ruled the case between *Shanghai Rijing Electric Co., Ltd. v. Panasonic (China) Co., Ltd.* in 2016, it clearly denied finding that dealers of the same brand to allocate market constitute the conduct of reaching and implementing horizontal monopolistic agreements in violation of the AML. Specifically, the Shanghai No. 1 Intermediate People’s Court pointed out that the conduct implemented by the dealers at the distribution level only harmed intra-brand competition. As space for inter-brand competition remained in the market, the restriction imposed inside the brand itself would not lead to the effect of eliminating or restricting competition.<sup>15</sup>

Apparently, the approaches to find horizontal monopolistic agreements as reflected in the antitrust enforcement in the automotive industry directly conflict with the thinking held by the court. The conflict fuse was buried, however, as early as in October 2012 when the Guangdong Higher People’s Court ruled in the case between *Hui’erxun Technology Co. Ltd. v. Shenzhen Pest Prevention Association* that to constitute the horizontal monopolistic agreement prohibited by the AML, the mere conduct of competitors to fix the prices was not enough, specific analysis should be made with respect to whether the price fixing conduct eliminated or restricted competition.<sup>16</sup> While the abovementioned approaches taken by the AEA in the enforcement actions against undertakings in the automotive industry ignited the conflict fuse, the judgment of the Shanghai No. 1 Intermediate People’s Court led to a complete eruption of the conflict.

One of the important reasons for the divergence between the AEA and the courts in China is that they have different understandings of the harms to competition. According to the administrative sanction decisions against Audi and Dongfeng Nissan, it is apparent that the AEA believes that intra-brand competition is also important for maintaining market competition. Yet courts in China, as typically represented by the Shanghai No. 1 Intermediate People’s Court, hold the opinion that the assessment of competitive harm should be based on the influence of the conduct concerned over inter-brand competition, and even consider dealers of the same brand as the parallel players in the vertical economic structure, rather than the “undertaking with a competing relationship” under Article 13 of the AML.<sup>17</sup>

13 Jiangsu Price Bureau, the No. 2520160027 Administrative Sanction Decision, available at <http://www.shdrc.gov.cn/fzgggz/jggj/jghzcfjds/25286.htm>.

14 Jiangsu Price Bureau, The [2014] Su Jia Fan Long Duan An No. 2 Administrative Sanction Decision.

15 Judgment of the Shanghai No.1 Intermediate People’s Court, (2014) Hu Yi Min Wu (Zhi) Chu Zi No. 120.

16 Judgement of the Guangdong Higher People’s Court, (2012) Yue Gao Fa Min Zhong Zi No. 155.

17 *Supra* note 15.

Up to the present, China's antitrust enforcement and China's judicial practice have not yet been able to resolve the divergence shared between them. How the approaches to find horizontal monopolistic agreements developed by the antitrust enforcement in the automotive industry will further develop and how the two enforcement bodies of the AML reconcile their opinions are issues to be explored according to China's future development of AML practice.

### ***C. Strengthening the Regulation of Vertical Non-Price Restrictions***

To date, China's AEA has not yet in any case found that the vertical non-price restriction(s) imposed by any branded carmakers on their respective dealers constitute vertical no-price monopolistic agreements. This has been largely attributed to the AML's clear stipulation only that the prohibited vertical monopolistic agreements are those related to resale prices. Although the AEA can deem other vertical restrictions as vertical monopolistic agreements based on its authority provided by law,<sup>18</sup> at least when the antitrust enforcement actions were relatively intensive, that is, between 2011 and 2015, in practice there did not exist corresponding standards that the AEA can refer to. While vertical non-price restrictions often have pro-competitive effects, the balance of the anticompetitive effects of vertical non-price restrictions vis-à-vis their pro-competitive effects may be difficult and challenging for the AEA, too.

Other than that, the 2005 issued *Implementation Measures for the Administration of Automobile Branded Sales* created the imbalanced position of branded car manufacturers vis-à-vis their dealers, and thus the manufacturers can impose vertical non-price restrictions, e.g. restricting the dealers' sales territory, tying dead storage to dealers, bundling original components when supplying new vehicles, restricting dealers from selling to end-consumers outside the respective sales territory, limiting dealers confining the channels of sourcing vehicle spare parts to the carmakers or undertakings designated by the carmakers, etc. If the *Implementation Measures for the Administration of Automobile Branded Sales* were not to be amended, the imbalanced position between carmakers and dealers would be difficult to change and, in this circumstance, the AEA's investigations into vertical non-price restrictions would be palliative.

Nonetheless, the abovementioned difficulties encountered by the AEA and the enforcement dilemma incurred by the *Implementation Measures for the Administration of Automobile Branded Sales* do not indicate that China's AEA do not have concerns over vertical non-price restrictions in China's automotive industry. On the contrary, the Ministry of Commerce of the P. R. China and the National Development and Reform Commission, which were the Antitrust Enforcement Agencies before the 2019 structure and organization reform of the Central Government, respectively drafted the *Measures for the Administration of Automobile Sales* and the Guidelines. The *Measures for the Administration of Automobile Sales* have been come into effect on July 1, 2017.

The promulgation of the *Measures for the Administration of Automobile Sales* repealed the *Implementation Measures for the Administration of Automobile Branded Sales* and consequently the unfavorable tide faced by dealers created by the previous regulations was reversed. Specifically, from such aspects of prohibiting the restriction on the supply and resale of spare parts, differentiating the sales function and after-sale service function of dealers, and enhancing constraints on automobile suppliers, the *Measures for the Administration of Automobile Sales* have stricken a more balanced position of carmakers vis-à-vis their dealers.

It is worth noting that, although the *Measures for the Administration of Automobile Sales* prohibits typical vertical non-price restrictions such as exclusive distribution and tying, strictly speaking they are not directly and necessarily related to the AML. Hence, the conduct of carmakers in violation of the *Measures for the Administration of Automobile Sales* will not necessarily violate the AML, and undertakings would not assume the relevant liabilities under the AML for their conduct.

With respect to whether the vertical non-price restrictions imposed by carmakers may violate the AML, it is the Guidelines that analyze the pro-competitive and anti-competitive effects of relevant vertical non-price restrictions, list the types of vertical non-price restrictions that may be of a greater possibility to affect market competition, and provide preliminary quantitative market share standard to assess the market power of relevant undertakings. It can be understood that the Guidelines have brought sophistication to the regulation of vertical non-price restrictions under the antitrust laws. However, the Guidelines have not yet been promulgated after complete the process of soliciting public opinions on April 12, 2016.

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<sup>18</sup> *Supra* note 12.

Table Two: A Brief Summary of the Regulation on Vertical Non-price Restrictions of the Guidelines<sup>19</sup>

<p><b>Premise of finding vertical non-price restrictions constitute vertical non-price monopolistic agreements</b></p>	<p>1) Undertakings concerned have market power in the relevant market. Regarding the evaluation of market power, undertakings with market share in the relevant market being between 25 to 30 percent may not have significant market power.</p> <p>2) The relevant vertical non-price restrictions lead to obvious effect of eliminating or restricting competition.</p>	
<p><b>Vertical non-price restrictions that may constitute vertical non-price monopolistic agreements.</b></p>	<p>Territory restriction &amp; Customer restriction</p>	<p>1) Restrict passive sale by the dealer;</p> <p>2) Restrict cross-supply between dealers;</p> <p>3) Restrict the dealer and repair service provider from selling the components necessary for automobile repair to end-users.</p> <p>4) Except in the case of the OEM agreement, the carmaker reaches an agreement with the supplier of components, repairing tools, and testing instruments or with other suppliers of equipment to restrict them from supplying relevant components, repairing tools, testing instruments, or other equipment to dealers, repair service providers or end-users.</p>
	<p>Imposing indirect vertical restrictions on after-sale repair services and component circulation through warranty clauses</p>	<p>1) Car supplier uses the end-user will have all the repair and maintenance work outside the scope of warranty completed by the authorized repair network as the condition for the car supplier to assume warranty obligation(s).</p> <p>2) For the after-sale component outside the scope of warranty, the car supplier requires the use of original components as the condition for assuming warranty obligation(s).</p> <p>3) Car supplier restricts its repair network from providing the parallel imported vehicles with after-sale services and maintenance services without justifiable reasons.</p>
	<p>Improperly restricting the sales and services capacity of dealers by means of business policies alike.</p>	<p>1) Car supplier mandatorily bundles cars, after-sale components, specialty items, consumables, repairing tools and testing instruments, etc. to dealers or repair service providers when they did not order them.</p> <p>2) Car supplier forces the dealer or repair service provider to accept unreasonable selling target of cars or after-sale components, inventory types and quantity.</p> <p>3) Car supplier forces the dealer to bear the publicity and promotion expenses for the advertisement campaigns carried out in the name of car supplier or restricts the particular manner and media for advertising campaigns carried out at the expenses of the dealer itself in manners that are mandatory.</p> <p>4) Car supplier mandates that the dealer and repair service provider can use the services of particular ad design entities or building entities only, or that the building materials, general equipment, information management system and office facilities required by the dealer and repair service provider must adopt particular brands, supplier and supply channels.</p> <p>5) Car supplier fails to state the reasons when it refuses to supply or terminates the distribution agreement.</p>

<sup>19</sup> The table does not summarize the procompetitive effects and anticompetitive effects of various vertical non-price restrictions provided by the Guidelines. For details of relevant analyses, see The Price REGULATORY Bureau of the National Development and Reform Commission, The Antitrust Guidelines for the Automotive Industry (release date for public comments: March 23, 2016).

#### ***D. After-Sale Markets and Distribution Services as a Relevant Product Market***

When dealers no longer provide after-sale service and supply spare parts based on the authorization of carmakers, and when it is possible that a carmaker can be found to have a dominant market position in the after-sale market of its brand, there will be increased risks that the after-sale restrictions imposed by a branded carmaker on its supplier(s) of spare parts, the dealer(s) and repair service provider(s) violate the AML. In this regard, the Guidelines first make it possible to define the after-sale market of a certain brand as an independent relevant market. Based on that, the Guidelines provide that such conduct may be considered an abuse of market dominance from the perspectives of spare parts producing, spare parts supply and circulation, and the availability of repair technology information, testing machines and repairing tools. Such regulations in the Guidelines have laid down the foundation for introducing competition into after-sale market of the automotive industry, and are favorable to solving the overly high ratio between car spare parts price and car selling price.

Additionally, it is very difficult to define a certain brand as an independent relevant market under antitrust laws. Yet the Guidelines which define the after-sale market of a certain brand enlightened the thinking in China on defining the distribution service for a certain brand as an independent relevant market. Specifically, the Guidelines point out that, in the automobile after-sale market, the after-sale repairing and maintaining service of a certain model of vehicle may require the use of the spare parts that are compatible with the vehicle. The completion of relevant after-sale services is premised with availability of the repairing technology information involving that certain model of vehicle, too. Since compatibility issue and lock-in effect do exist objectively in the after-sale market of automobiles, car brand becomes an important relevant factor in defining the after-sale market of automobiles.

Referring to the above thinking in the Guidelines, when the distribution of a certain brand also involves an objectively existed lock-in effect, a natural question would be whether the distribution service of that certain brand may be defined as an independent relevant product market. This question is of both theoretical and practical significance in China.

The practical significance is related to the fact that under the current AML, only the AEA of the State Council can deem vertical non-price restrictions as vertical non-price monopolistic agreements. Since courts are not the AEA of the State Council, the plaintiffs in antitrust civil cases (normally are dealers of manufacturers) can only challenge vertical non-price restrictions such as tying, territory restriction, and exclusive supply/distribution imposed by defendants (normally are manufacturers) under the framework of abuse of market dominance. This means the plaintiffs have to define the relevant market and prove the dominant market position and the anticompetitive effect of the conduct of defendants. This burden of proof is often too heavy. If the distribution service of a certain brand can be defined as an independent relevant market, due to the control that the manufacturers can normally exercise towards distribution, it would be more feasible for plaintiffs in antitrust civil cases to show proof of dominant market position, thereby relieving the burden of proof, which in turn may cause a boom in antitrust civil actions in China.

## **IV. REVIEWING THE PAST AND LOOKING FORWARD TO THE FUTURE**

To a large degree, the imbalanced position incurred by the *Implementation Measures for the Administration of Automobile Branded Sales* has affected the antitrust enforcement of China in the automotive industry. As the imbalanced position provides the basis for branded carmakers to impose various restrictions on their dealers, China's antitrust enforcement in the automotive industry has been focused on the vertical relationship between carmakers and dealers; and while the AML clearly prohibits vertical price monopolistic agreements, the resale price maintenance imposed by branded carmakers has been the main conduct being punished in the enforcements.

The *Implementation Measures for the Administration of Automobile Branded Sales* stepped down from the stage of history in the series of antitrust enforcement actions in the automobile industry. The *Measures for the Administration of Automobile Sales* and the Guidelines as the synthesizer of the enforcement experiences set down the systematic legal framework for the regulation of the relationship between carmakers and dealers. Particularly with respect to the finding of vertical price monopolistic agreements and the regulation of vertical non-price restrictions, the Guidelines reflect the beneficial thinking of the AEA on issues in China's automotive industry. Thus, if the Guidelines can be promulgated successfully, they may provide effective guidance for the antitrust enforcement work in the automotive industry and protect competition in the market and the lawful rights and interests of consumers.



Looking forward to the future, although the relationship between branded carmakers and dealers is gradually returning to a balance, consider that in China's automotive market, where vehicles from the Europe, the U.S., and Japan all have their own suppliers of spare parts, and even domestic branded cars have their own independent part suppliers, the market shares of suppliers of spare parts in China's automotive market are more scattered compared to those in the U.S. or EU markets. As a result, the antitrust enforcement in China's automotive industry can still differ from the U.S.'s or the EU's, concerning the monopolies resulting from collusion between suppliers of spare parts.

Last but not the least, at the time when this summary was written, news has been known inside China's antitrust circle that Ford may be punished because of reaching and implementing vertical monopolistic agreements to restrict the vehicles' resale prices. Given this news, and the fact that China's AEA has accumulated rich experiences in the area of vertical price monopolistic agreements, it is likely that resale price maintenance will remain the focus of China's antitrust enforcement in the automotive industry. Elsewhere, since the *Measures for the Administration of Automobile Sales* and the Guidelines attach attention to the after-sale market of automobiles, conduct in the aftermarket may be another focus of antitrust enforcement in future.



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