A RETROSPECTIVE OF CHINESE ANTITRUST ENFORCEMENT IN THE CHEMICAL INDUSTRY

BY YI (JOSH) XUE & YIKAI YANG[1]

1 Yi Xue is Partner of Zhong Lun Law Firm, and Yikai Yang is Associate in the Anti-trust Group of Zhong Lun Law Firm.

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I. BACKGROUND

2019 witnessed significant developments in China's antitrust history. Since the integration and restructuring of the three Chinese antitrust enforcement agencies in April 2018, the Antitrust Bureau of the State Administration for Market Regulation ("SAMR"), together with the provincial market regulation bureau, has committed itself to strengthening law enforcement powers, and promoting antitrust legislation. By the end of 2019, nearly 3,000 mergers had received clearance (including 44 conditional approvals), and nearly 300 antitrust violations had been investigated and punished. In June 2019, the SAMR adopted three sets of interim provisions, which became effective that September, including the Interim Provisions on the Prohibition of Monopoly Agreements, the Interim Provisions on the Prohibition of Abuse of Dominant Market Position, and the Interim Provisions on Prohibiting Acts of Abuse of Administrative Authority to Eliminate or Restrict Competition. On January 2, 2020, the SAMR issued a draft for public comment, namely the Draft Amendment to the Anti-Monopoly Law, which reflects trends in the regulatory framework of Chinese antitrust enforcement.

The chemical industry, as a sector with bearing on the people's daily livelihood, has increasingly become a focus of vigorous antitrust enforcement in recent years. 2019 also witnessed a great transition in the chemical industry in China. In the 2020 China Energy and Chemical Industry Development Report, which was released in December 2019, it was noted that China's needs of petrochemical and chemical industry have entered the "ecological" stage (beyond the "survival" stage). The hierarchy and content of China's needs, the prospects for development, and core values are all changing. The primary goals of China's energy and chemical plan during the "Thirteenth Five-Year Plan" period are expected to be achieved soon. In 2020, China's chemical industry will release new production capacity, unlock intense competition, and become increasingly integrated.

The "chemical industry" is not a single classification under the Industrial classification for National Economic Activities,[2] and there is no common consensus as to its scope. Instead, there is a heated discussion as to its boundaries and subcategories. Based on our best understanding, we have compiled, through (incomplete) publicly available information, and our own knowledge, statistics on administrative enforcement in the chemical industry in the 11 years since the Chinese Anti-Monopoly Law ("AML") came into effect. There have been in total 28 administrative investigations that concern alleged monopolistic practices in chemical industries, making up nearly 10 percent of all cases. Industries involving gas and oil (including natural gas, liquefied petroleum gas, and aviation turbine oil), explosive materials and equipment (including fireworks, firecrackers, and civil explosive equipment), lenses and LCD panels (including contact lenses, spectacle lenses, and LCD panels), chemical substances (including alcohol ester, twelve film-forming auxiliaries, PVC resin, and chlorophenol), and tires have been factored into this analysis.

In our retrospective of Chinese antitrust enforcement in the chemical industry, we set out to describe the era in three steps: (1) by reviewing the specific type of monopolistic practices in these 28 cases and setting out a corresponding statistical summary; (2) by highlighting several "hotspots" for antitrust enforcement history in this industry; and (3) by sharing our views on likely enforcement trends in the near future.

2 GB/T 4754-2017.

II. A STATISTICAL OVERVIEW OF ANTITRUST INVESTIGATIONS IN THE CHEMICAL INDUSTRY

Based on (admittedly incomplete) statistics, by the end of 2019, there were in total 28 anti-monopoly cases that have been investigated by the relevant authorities. These involve horizontal monopoly agreements (including one violation by an industry association), vertical monopoly agreements, abuses of dominance, and failures to notify a concentration. Please find below a table categorizing these cases, and a statistical summary setting out our observations.

A. Information on Decisions in the Chemical Industry

Table 1

No.	Type of Monopolistic Practice	Operators Being Investigated	Violated Provisions of the AML[3]	Governmental Authority	Decision Issuance Date
1	Horizontal Monopoly Agreement	18 PVC resin producers	Fixing or changing the prices of a commodity	National Development and Reform Commission	2017/9/25
2		6 chlorophenol production and sales enterprises in Jiangsu province		Jiangsu Price Bureau, anti-price monopoly branch	Early 2016
3		6 LCD panel enterprises including Samsung, LG, Chi Mei, AUO, CPT, HannStar Display		National Development and Reform Commission	2013/1/17 (Date of news publication)
4		3 fireworks and firecrackers enterprises in Guangxi Qinzhou City	Dividing sales market or material purchase market	Guangxi Administration for Industry and Commerce	2018/7/25
5		5 fireworks and firecrackers enterprises in Henan Gushi County		Henan Administration for Industry and Commerce	2016/12/19
6		6 fireworks and firecrackers enterprises in Inner Mongolia Chifeng City		Inner Mongolia Administration for Industry and Commerce	2014/5/27
7		7 bottled liquefied petroleum gas (LPG) enterprises in Taihe County, Jiangxi Province		Jiangxi Administration for Industry and Commerce	2011/4/1
8		Zhongshan Gas Association	Industry association making arrangements for competitors to market allocation	Guangdong Development and Reform Commission	2018/8/14
9		7 bottled liquefied petroleum gas (LPG) enterprises in Yongding District, Zhangjiajie, Hunan Province	Fixing or changing the prices of a commodity & Dividing sales market or material purchase market	Hunan Administration for Market Regulation	2019/11/22

3 The *Anti-monopoly Law of People's Republic of China* (the "AML").

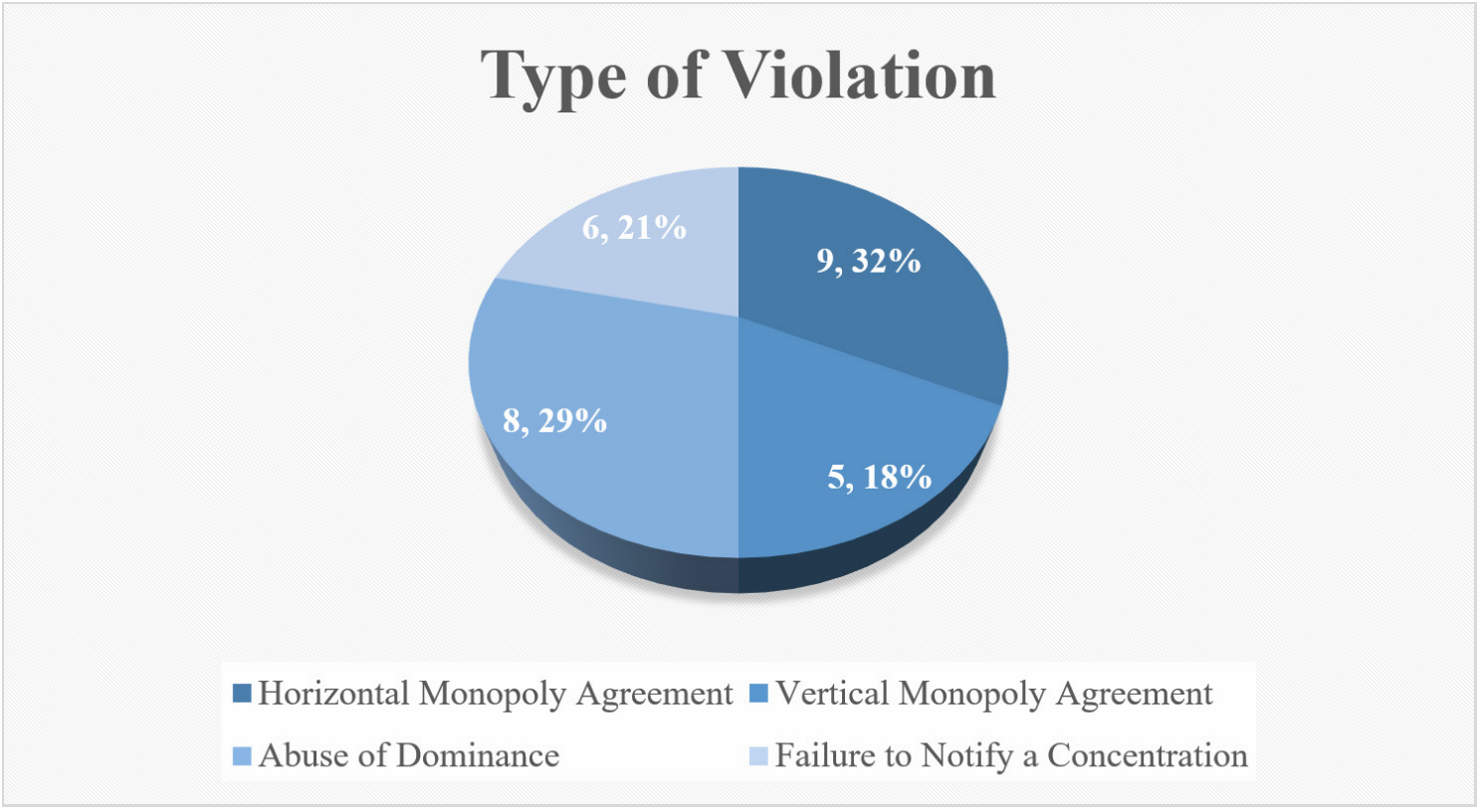
10	Vertical Monopoly Agreement	Haichang Contact Lens Co. Shanghai Branch; Shanghai Horien Contact Lens Optics Co.	Fixing the price for resale of a commodity to a third party (Resale Price Maintenance, "RPM")	Shanghai Administration for Market Regulation	2019/4/24 (Termination of Investigation)
11		PetroChina Company Limited Daqing Oilfield Company Natural Gas Branch & Natural Gas Sales Daqing Branch		National Development and Reform Commission	2018/1/26
12		Eastman (China) Investment Management Co.; Shounuo International Trading (Shanghai) Co.		Shanghai Price Bureau	2017/12/27
13		Shanghai Hantai Tire Sales Co.		Shanghai Price Bureau	2016/4/12
14		7 spectacles lens producers including Essilor, Nikon, Zeiss, Bausch & Lomb, JNJ, etc.		Competent pricing authority in Beijing, Shanghai and Guangzhou	2014/5/29 (Date of news publication)
15	Abuse of Dominance	Eastman (China) Investment Management Co.	Restricting counterparties to trade only with the said operator or its designated operator without justified reasons	Shanghai Administration for Market Regulation	2019/4/16
16		Hubei Lianxing Civil Explosive Equipment Co.		Hubei Administration for Industry and Commerce	2018/11/15 (Suspension of Investigation)
17		Suqian PetroChina Kunlun Gas Co.		Jiangsu Administration for Industry and Commerce	2016/12/30
18		Yancheng Xinao Gas Co.	Adding other unreasonable conditions to the trading without justified reasons	Jiangsu Administration for Market Regulation	2019/2/20 (Suspension of Investigation)
19		Ordos Sanya Liquefied Petroleum Gas Co. and 2 other enterprises		Inner Mongolia Administration for Industry and Commerce	2016/12/14 (Termination of Investigation)
20		Qingdao Xinao New City Gas Co.		Shandong Administration for Industry and Commerce	2016/3/21
21		Chongqing Gas Group Co.		Chongqing Administration for Industry and Commerce	2014/4/28
22		5 pipeline natural gas supply and service enterprises in Hubei	Selling commodities at unfairly high prices	Hubei Price Bureau	2016/6/23

23	Failure to Notify a Concentration	Praxair (China) Investment Co. & Nanjing Refinery Co.	Illegal implementation of the concentration	SAMR	2019/4/28
24		Jiangsu Dewei New Materials Co.		SAMR	2019/2/14
25		Linde Gas (Hong Kong) Co. & Guangzhou Steel Holdings Co.		SAMR	2018/12/4
26		Linde Gas (Hong Kong) Co. & Dahua Group Co.		SAMR	2018/10/10
27		Linde Gas (Hong Kong) Co. & Shanghai Huayi Energy Chemical Co.		SAMR	2018/9/11
28		Korea Osia Co.		The Ministry of Commerce	2017/4/21

B. Statistical Summary and Observations on the Above Cases

From Table 1, it can be seen that 9 cases concerned horizontal monopoly agreements, including one case where Zhongshan Gas Association made arrangements for competitors in the gas industry to engage in an agreement to allocate sales, and 5 cases concerning vertical monopoly agreements. These account for 32 percent and 18 percent respectively of the total, and together account for 50 percent of all antitrust investigations in the chemical industry. There have been eight abuse of dominance cases, which account for 29 percent of the total. There were six cases in which a concentration met the notification thresholds, but the parties failed to notify, which accounts for 21 percent of the total. There appears to be no noteworthy or significant trend favoring any specific type of case in the industry.

Table 2



Looking at antitrust enforcement overall, based on our incomplete summary of the statistics, as of the end of 2019, there had been in total 184 cases relating to (horizontal and vertical) monopoly agreements, 65 abuse of dominance cases, and 45 cases where parties failed to notify a concentration.

Table 3

	Chemical Industry	Overall Industry
Monopoly Agreement (Horizontal and Vertical)	14	184
Abuse of Dominance	8	65
Failure to Notify a Concentration	6	45
Total	28	294

From Table 3, it appears that the ratio of monopoly agreement to abuse of dominance cases in the chemical industry is relatively small compared to overall enforcement. In other words, there are relatively more abuse of dominance cases in Chinese antitrust enforcement history in the chemical industry than it in others. One reason for this might because that many enterprises in the chemical industry, like gas, fireworks and firecrackers, need special administrative licenses, and permits or involve franchises, etc. This scenario might have resulted in market power or leverage for certain enterprises, allowing them to control prices, volumes or other transaction conditions, leading to dependency on the part of upstream or downstream companies, or the creation of entry barriers.

Looking at the nature of the investigated parties listed in Table 1, there are various types: wholly foreign-owned companies, foreign-investment companies, Taiwanese companies, Sino-foreign joint ventures, state-owned companies (holding and joint-stock), companies invested in by natural persons, and industry associations. And there seems to be no noteworthy or significant tendency to enforce against any particular type of company.

III. ENFORCEMENT "HOSPOTS" IN THE CHEMICAL INDUSTRY

Based on Table 1, by analyzing the business areas of the investigated parties, their business models, and the logic, analysis and results of the administrative decisions, there are several "hotspots" worth noting, that could provide valuable guidance to enterprises in the chemical industry in terms of compliance. We draw attention to those hotspots in the sections below, and contribute our thoughts and insights.

A. Gas and Oil have Been the Focus of Enforcement

Gas and oil, being important energy sources, are closely related to people's livelihood and everyday lives, especially pipeline supplies of natural gas and liquefied petroleum gas ("LPG"). Partially for this reason, gas and oil have been key areas of focus for antitrust enforcement in the chemical industry.

According to the statistics in Table 1, 10 out of the 28 cases involve gas and oil (including natural gas, LPG, and aviation turbine oil). There have been three horizontal monopoly agreement cases involving market allocation, one resale price maintenance ("RPM") case, six abuse of dominance cases (four relating to unreasonable transaction conditions, one restricting transactions, and one excessive pricing case), and one case of failing to notify a concentration.

Abuse of dominance cases make up the majority. By way of illustration, enterprises providing natural gas supply services in cities have all the characteristics of a *per se* monopoly. In a suspected abuse of dominance case, when defining the relevant market, authorities take into consideration (1) the characteristics of the gas supply industry; and (2) the fact that an enterprise must receive a franchise from the competent governmental authority in order to provide the service in question. This franchise agreement specifies the exact geographic areas in which the enterprise is allowed to conduct business:

(1) Concerning product characteristics, gas is a clean energy source, i.e. it is more environmentally friendly than others like coal or refined oil. As such, it meets requirements for the prevention and control of atmospheric pollution. It also has advantages in terms of price and efficiency. Thus, the substitutability between gas and coal or refined oil is relatively weak.

(2) Due to certain administrative measures[4] and the characteristics of the unified transmission of urban public gas through municipal pipeline networks, certain gas enterprises are by definition the sole operator in certain specified geographic regions, and there is no competition from similar operators.

As a sole operator in a given geographic region, gas enterprises have control over gas supply, methods of supply, and other relevant trading conditions. Users in a given region are completely dependent: they can only choose to purchase the gas supply services provided by those enterprises and cannot turn to others. The difficulties facing other gas operators in entering the relevant market is another factor to consider when determining whether a given gas enterprise is dominant.

Thus, urban gas supply enterprises normally have a relatively large market share, a certain degree of control over transaction conditions, and can obstruct or affect other operators' ability to enter the relevant market. Once a given enterprise is found to have a dominant market position, any restrictions it imposes on upstream or downstream enterprises or users need to be evaluated extremely prudently and cautiously.

B. Enterprises in Fireworks and Firecrackers Similarly Conclude Horizontal Monopoly Agreements to Divide Markets

Of the nine horizontal monopoly agreement investigations summarized in Table 1, three relate to the fireworks or firecrackers area, and all resulted in penalties for dividing markets. These decisions concern three enterprises in Guangxi Qinzhou City, six in Inner Mongolia Chifeng City, and five in Henan Gushi County.

1. *Guangxi Qinzhou City* Case

On April 12, 2012, Qinzhou Municipal Safety and Production Supervision and Administration Bureau issued the Qin'an Supervision [2012] No. 55 Notice, which provided that: (1) fireworks and firecrackers wholesale enterprises must only engage in business activities within their territories, and must not operate across jurisdictions; (2) fireworks and firecrackers retail enterprises must purchase from prescribed wholesale enterprises and are forbidden to purchase from other sources; and (3) the notice be sent to all wholesale and retail enterprises in the jurisdiction and implemented accordingly.

Based on this notice, three fireworks and firecrackers wholesale enterprises in Qinnan District, out of their own interests, entered into the Qinnan District Fireworks and Firecrackers Wholesale Market Operation and Management Agreement, dividing the operational management area, setting up execution dates and terms, adding anti-counterfeiting marks to their products to implement market partitioning, and allocated regional purchases, sales, distribution and tracking services. Enterprises would be penalized and fined if found to be selling products to retailers beyond their designated regions, or assisting retailers not in designated regions to apply for licenses.

These enterprises also, by virtue of being delegated the responsibility of assisting in "safety production knowledge training and assessment" and uniformly setting up the pre-conditions for retailers to apply the Fireworks and Firecrackers Retail License in their designated regions, required retailers to pay certain sums in advance. Otherwise, they would refuse to deal with their license application or would punish them by restricting the supply volumes.

4 For example, in the case against Qingdao Xinao New City Gas, according to the Regulations on the Management of Urban Gas, the gas management department of the local people's government at or above the county level must formulate a gas development plan for its own administrative area. The Administrative Measures for Gas Business Licenses in Shangdong Province prescribe that only one gas enterprise is allowed to provide related services in a given geographic region.

2. *Inner Mongolia Chifeng City* Case

Since 2006, the Songshan and Hongshan District Safety and Production Supervision and Administration Bureau, has divided the sales region of wholesale enterprises (i.e. each designated region would be supplied by only one wholesaler, retailers in this region can only purchase products from such sole wholesaler, and wholesalers' cross-supplying is strictly prohibited). This was done ostensibly to prevent accidents caused by product quality degradation out of malicious competition, and to guide fireworks and firecrackers enterprises to actively participate in market management.

Very similar to the above *Guangxi* case, though six fireworks and firecrackers enterprises in Songshan and Hongshan District did not enter into any specific agreement, they strictly implemented the above policy by adding anti-counterfeiting marks and confiscating products with no such marks, inspecting products sold by retailers in order to avoid cross-supplies, and requiring retailers to pay a certain amounts in advance (or otherwise they would refuse to deal with their license application, or would sanction them by restricting supply volumes).

3. *Henan Gushi County* Case

In March 2015, in order to "[regulate] the production, operation, storage, sales, safety operation and management of fireworks and firecrackers as well as [eliminate] hidden dangers," five enterprises entered into a joint operation agreement, whereby (1) a joint distribution center would be established, (2) the previous operational situation and inventory of all enterprises would be accounted for and checked, (3) sales channels would be unified and any purchase without permission would be fined RMB 2 million, (4) storage, management, sales and prices would be unified, and (5) total revenues would be divided based on agreed proportions.

After implementing this joint operation, by changing outer packaging without changing purchase prices, the participants made sales prices to retailers uniform for the fireworks and firecrackers of the same specifications, and in fact increased that price by 15-20 percent, forcing customers to passively accept corresponding increases in retail prices.

The Regulations on the Safety Management of Fireworks and Firecrackers in and of themselves did not prohibit wholesalers from supplying products to retailers in other administrative regions, or stipulate that retailers could only purchase products from wholesale enterprises in their administrative regions. In the above three cases, wholesalers were independent legal entities in the same market. They should have competed accordingly, and in accordance with the rules of the market economy and other relevant laws and regulations.

However, they actively organized and implemented a division of wholesale sales, and formed an alliance, which relied on agreed *pro rata* plan, and they lost the incentive to compete. This prevented enterprises and consumers in the fireworks and firecrackers retail industry from enjoying the benefits of effective competition at the wholesale level, and thus objectively led to wholesalers enjoying monopoly profits.

It is worth noting that in the first two cases, even though the relevant local safety and production supervision and administration bureau set up certain administrative restrictions, entering into and implementing monopoly agreement among competitive enterprises would still not be immune under the AML. Enterprises are still prohibited from concluding horizontal monopoly agreements, and are subject to administrative penalties according to the relevant interim provisions.5

If the enterprises in question had evidence showing that the conclusion of the agreement was caused by their "passive" compliance with administrative orders, they could have been given a lighter or mitigated punishment.6 Interestingly, however, the investigated parties were given heavy punishments:

5 *Interim Provisions on the Prohibition of Monopoly Agreements,* Article 32, section 4, Operators that conclude monopoly agreements due to abuse of administrative authority by administrative authorities and organizations authorized by laws and regulations to manage public affairs shall be subject to the preceding paragraph. Operators which have evidence to prove that the conclusion of the monopoly agreement was caused by passive compliance with administrative orders may be given a lighter or mitigated punishment in accordance with the law.

6 *Id.*

- In the *Guangxi* case, the enterprises were given heavier administrative penalties, i.e. 5 percent, and 8 percent of their overall revenue from the previous year, due to the fact that they refused to acknowledge their participation in the wholesale market operation and management agreement.

- In the *Inner Mongolia* case, the enterprises were also given heavier penalties, i.e. 7 percent and 8 percent of the previous year's overall revenue, due to the fact that they continued to divide the wholesale sales market on the basis of administrative limitations for five years, and took advantage of the safety management activities of the local bureau to respect and check whether there were any violations of their market division policy. They knew or ought to have known that these acts constituted an infringement.

Another interesting fact is that the enterprises in all three cases violated more than one provision of the AML, yet were penalized only under one provision:

- In the *Inner Mongolia* case, the Inner Mongolia Administration for Industry and Commerce, in its administrative decision, recognized that there were four enterprises who abused a dominance by attaching unjustified transaction conditions. However, it did not elaborate in detail on the definition of the relevant market, or the determination of dominance, and only punished the participants for violation of Article 13 of the AML (horizontal monopoly agreements) instead of both Article 13 and 17 of the AML (abuse of dominance).

- In the *Guangxi* case, though it had very similar facts to the *Inner Mongolia* case, especially insofar there were compulsory requirements for retailers to pay in advance, the Guangxi Administration for Industry and Commerce did not allege any abuse of dominance in its administrative decision.

- In the *Henan* case, though the prices for retailers were fixed and unified by joint decisions, the Henan Administration for Industry and Commerce did not impose administrative penalties for violation of Article 13 (1) of the AML.7 Instead, it only imposed a penalty for violation of Article 13 (3) of the AML.

One possible reason for this is that the administrative penalty would have been the same regardless of whether the investigated party were found to have been in violation of one, two or even more provisions of the AML. The different types of violation only affect the percentage of the revenue to be used as a basis for the fine, and one type of violation can also be considered as an aggravating factor in assessing another violation.

Clearly, enterprises in the fireworks and firecrackers industry should pay more attention when implementing certain administrative requirements or limitations that might be questioned or challenged from an antitrust perspective. They should not take it for granted that they would not be punished for such violations. Due to certain limitations or specifications in their business licenses or permits, they should be more prudent when trading with upstream or downstream entities, taking into consideration whether they might be found to be dominant.

C. Administrative Punishment in Horizontal Monopoly Agreement Cases Involving Market Allocation is More Likely to Include Confiscation of Illegal Gains

In the 11 years since the Anti-monopoly Law came into effect, the penalty of "confiscation of illegal gains" should have received more attention both in research and Chinese law enforcement practice. The AML and the Administrative Penalties Law of the People's Republic of China only set out the general principles for the confiscation of illegal gains, and lack detailed, clear, and specific instructions or guidelines on how illegal gains should be quantified, and on what occasions this remedy should be used.

The AML provides that the remedy of confiscation of illegal gains can be applied in monopoly agreement and abuse of dominance cases, but does not mention it in relation to mergers, or abuses of administrative power. But the AML does not specify whether the confiscation of illegal gains is compulsory in any given case. Given that the definition of "illegal gains" is vague, the lack of any unified and clear standard, and the difficulty of calculating and accounting for such gains, the application of this remedy is subject to problems that need constructive and expeditious solution.

7 Article 13 The following monopoly agreements are prohibited from being made between operators which are in competition: (1) Those on fixing or changing the prices of a commodity … (3) Those on dividing a sales market or material purchase market…

The general principle is that the calculation of illegal income should be based on the income obtained by the parties from the illegal production or sales, minus appropriate and reasonable expenses directly related to the parties' business activities. However, the scope of "appropriate and reasonable expenses" is modulated by several factors, such as labor costs, the cost of raw materials, the length of the accounting period, etc., and its implementation raises great difficulties in practice. In most cases, enforcement authorities tend not to confiscate illegal gains, and instead adjust the penalty upwards to compensate for this.

Of the 22 cases concerning monopoly agreements and abuses of dominance in Table 1, there are four cases that were terminated or suspended, and one case concerns an industry association. Besides those five cases (in which confiscation of illegal gains would not be applicable), only 7 out of 17 cases even mentioned the term "confiscation of illegal gains," regardless of whether the antitrust authority actually calculated or confiscated them. Of these seven cases, five concern dividing sales markets (with one also involving price fixing), one concerns price fixing alone, and one concerns an abuse of dominance by attaching unjustified transaction conditions.

Of these seven cases, four specified the exact amount of illegal gains and confiscated them accordingly, taking up to only 23.5 percent of the relevant revenue. In three cases (involving market allocation), the authority was unable to calculate the amount of illegal gains because the investigated parties either: (1) were small or micro enterprises with incomplete financial data whose "normal" income or expenditure under competitive circumstances could not be reasonably calculated; (2) had not established complete financial accounts; or (3) could have realized some income through retailers' voluntary actions due to those retailers' dependency on the parties, and certain delivery conditions.

From the above, it can be seen that in horizontal monopoly agreement cases involving market division, illegal gains tend to be easier to calculate and account for than in other cases, provided that the parties have complete financial data and accounts. One possible reason for this is that in many cases involving market division, the parties divide overall income on an agreed *pro rata* basis. As such, any income after the implementation of the agreement would largely be considered to be illegal. If the alliance decides to divide overall revenue to each party according to some agreed proportion, it must by necessity set up a financial system to keep sales records and accounts. Thus, the illegal gains are likely easier to calculate.

As antitrust enforcement becomes more sophisticated, there will be more and more arguments concerning whether it is compulsory to confiscate illegal gains, and, if so, how to calculate them in a legitimate and feasible way. Such confiscation is not only a means to prevent profits from illegal acts, but also a deterrent in addition to fines based on revenues. In June 2016, the National Development and Reform Commission issued a draft for comment concerning Guidelines on the Identification of Illegal Gains Derived by Operators from Monopolistic Practices and the Determination of Fines. However, it raised many heated discussions, and the official guidelines were never enacted. It is speculated that the SAMR and the State Council Anti-Monopoly Committee are actively discussing a draft set of such guidelines, and are considering making this a significant part of the reform of Chinese antitrust legislation and enforcement.

D. Administrative Investigations into Suspected Monopolistic practices in the Chemical Industry are mostly Initiated by Third Party Report or Whistleblowers

According to Article 15 of the Interim Provisions on the Prohibition of Monopoly Agreements, and Article 23 of the Interim Provisions on the Prohibition of Abuse of Dominant Market Position, antitrust enforcement authorities may discover suspected illegal acts through their own powers and functions, or through whistle-blowing, assignment by high-level organs, transfer from other organs, report from low-level organs, reports from operators on their own initiative, and other means.

Thus, there are three primary ways for the antitrust enforcement authorities to initiate an investigation: (1) an operator itself; (2) the authority's active discovery; and (3) whistleblowing from third parties. In Table 1, of the first 22 cases concerning monopolistic agreements and abuses of dominance, 13 decisions specify the origin of the case. Twelve of them were initiated due to third party whistle-blowing, i.e. about 55 percent.

IV. ANTITRUST ENFORCEMENT TRENDS IN THE CHEMICAL INDUSTRY

Due to the integration and restructuring of the enforcement authority, enforcement power has been greatly strengthened, and the impetus for legislative reform and improvement has grown. The SAMR and local market regulation bureaus are eager to ensure competition review across all industries, especially those most closely related to people's livelihood, like the chemical industry. They have started to launch specific enforcement actions against administrative monopolies, strengthened anti-monopoly review of mergers, and stepped up enforcement against monopoly agreements and market abuses.

The challenges faced by enterprises in the chemical industry are not limited to the issues discussed above. The antitrust authority tends to embrace more and more comprehensive and logical analysis against suspected monopolistic practices, such as using economic tools (e.g. the critical loss analysis and Lerner Index methods used in the recent abuse case against Eastman), and tends to place more attention on new types of monopolistic conduct in order to prevent "legal business activities in disguise." Innovation and technological development are important for the chemical industry, yet would simultaneously bring more complex issues on the boundaries of intellectual property protection and monopolistic conduct.

It is to be expected that antitrust and competition issues in the chemical industry will become increasingly prominent, and it is advisable for enterprises in the sector to self-assess their compliance on a regular basis. In this way, they can advance their businesses while saving themselves from potential legal risks.

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