

The Enforcement of China's Anti-Monopoly Law and the Regulation on Restrictive Competition in Franchising

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Abstract: The promulgation of China's Anti-Monopoly Law (AML) on August 30, 2007 marked a symbolic beginning of a new era for Chinese competition regime. The status of the second largest economic entity and the most franchised country in the world has inevitably resulted in the increased level of competition enforcement activity, which has prompted increasingly growing concern and attention from domestic and international companies. The six years of AML enactment has shown that marvelous and considerable achievements have been accomplished in establishing an antitrust legal system for its socialist market economy. Although China's competition regime framework is relatively new, compared with the antitrust regime in the United States and the European Union, it should be expected that China is certain to deepen its enforcement of competition law and develop into the third leg of the global antitrust regime. This paper will address China's legal framework of restrictive competition, focusing on the manifestations in franchising, then discuss the enforcement of the AML by FOMCOM, NDRC, SAIC and Chinese courts, as well as the reporting of its competition investigations during the last few years, in the combination of some cases analysis in detail. This paper will also identify the balance between IP protection in franchising and the enforcement of the AML, because IP protection is crucial for the franchisors, but the abuse of IP will constitute the monopoly and restrictive competition, which is prohibited by China's AML and the antitrust regimes all over the world. Of course many challenges and problems in the enforcement of the AML will lie ahead of the enforcing agencies, and it is imperative for these agencies to cooperate with each other to battle against these challenges and problems. In the end, some suggestions are put forward to improve the legislation of restrictive competition so that the fair market competition can be protected and the interests of consumers and the society can be guarded as well.

Key words: Anti-Monopoly Law, antitrust, enforcement, restrictive competitive, regulation