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China's First Global Cartel Decision: NDRC fines LCD Panel Price Cartel

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NDRC Fines the Overseas LCD Manufacturers for the Price Cartel

On 4 January 2013, the National Development and Reform Commission (“**NDRC**”) of China announced a penalty decision against six overseas manufacturers of Liquid Crystal Display Panel (**LCD panel**) for the price cartel in the Mainland China between 2001 and 2006. The involved companies are two South Korean manufacturers - Samsung and LG, and four Taiwan-based manufacturers - AU Optronics, Chunghwa Picture Tubes, Chimei InnoLux, and HannStar. This is the first anti price-fixing decision of NDRC against the manufactures outside the Mainland China and signals this authority's advance in enforcement with global approach and prospect.

According to the statement of the NDRC, the investigation was triggered by the complaints from Chinese market participants. Some of the involved companies have made confessions of their infringement. NDRC ascertained that during the period mentioned above, totally 53 meetings between these six companies have been held in Taiwan and South Korea to exchange market information and discuss the LCD panel pricing. Based on this price collusion, the six manufactures implemented the price-fixing conducts in the LCD sales in the Mainland China. The investigation of NDRC shows that the involved six manufactures sold 5.14 million LCD panels in the Mainland China during the above period and made an illegal gain of RMB 208 million (approx. EUR 25.31 million).

Based on these findings, the NDRC ordered the six manufactures to pay back RMB 172 million to Chinese TV makers as damage compensation, confiscated the illegal gain of RMB 36.75 million and imposed an administrative fine of RMB 144 million, totally a monetary

NDRC's Investigation and Findings

NDRC's Sanctions and the Commitment of the Involved Companies

sanction in the amount of RMB 353 million (approx. EUR 42.96 million). Moreover, the six manufactures have made a commitment to extend the warranty period for the TV panels sold to the Chinese TV makers in the Mainland China from 18 months to 36 months.

After the enactment of the Anti-Monopoly Law (“AML”) in 2007, the NDRC is in charge of the fight against monopoly conducts and price collusion, while the Ministry of Commerce is in charge of merger control and the State Administration of Industry and Commerce is in charge of combating abuse of a dominant market position. In order to implement the AML, the NDRC adopted in 2010 the Regulation on Prohibition of Pricing Monopoly and the Rules on Administrative Enforcement Procedures on Prohibition of Pricing Monopoly. However, the investigation and enforcement in the LCD panel case finds its legal basis not in the AML but in the Price Law which took effect in 1998, since the infringement, as ascertained by the NDRC, occurred before the AML came into effect.

The Price Law sets up a broad legal framework for the price regulation by the NDRC, addresses itself to price administration in the sense of macroeconomic regulation, but also contains rules prohibiting unfair market pricing behaviors such as price collusion and manipulation. With regard to monopolistic pricing conducts the AML and the Price Law overlap. The NDRC is the authority to enforce both acts.

Although in the LCD panel case the NDRC only relied upon the Price Law, there is a strong signal that the NDRC intends to rely more upon the AML to address future cases, since the sanctions in the AML are much higher than those in the Price Law. Furthermore, in comparison to the Price Law, the AML, which is acknowledged worldwide as a market-economy-oriented competition law, can provide the NDRC with a better legal framework to approach the international pricing agreements having an effect on the Chinese market. Multinational companies should pay serious attention to this and make efforts to improve compliance of their pricing conducts on the Chinese market.

Legal Basis: Anti-Monopoly Law or Price Law?

Anti-Monopoly Law v. Price Law

Regulatory Tendency and Global Approach

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