
Deregistration--Severest Antitrust Punishment on the Trade Association

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Introduction

According to a press release² published by the National Development and Reform Commission (“**NDRC**”) on its website on 10 July, China’s Zhejiang Provincial Price Bureau³ (“**Price Bureau**”) recently concluded the investigation of a cartel case organized by a local trade association. In this case, 17 paper manufacturers reached and implemented a horizontal monopoly agreement under the organization of the local trade association in Hangzhou - Fuyang Paper Manufacturers Association (“**Paper Manufacturers Association**”). The 17 paper manufacturers were fined a total amount of RMB 7.78 million, accounting for 1% of their sales value in 2016. Furthermore, it is worth noting that the Paper Manufacturers Association, which played a critical and leading role in organizing and facilitating the aforementioned conspiracy, was forced to de-register by the Price Bureau for its wrongdoings. This is the first time an antitrust authority in China has ever invoked Article 46(3) of the Anti-Monopoly Law (“**AML**”) to de-register a trade association.

Facts

On 28 October 2016, the Paper Manufacturers Association organized a meeting attended by the aforementioned 17 paper manufacturers. At this

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² The original press release can be found on the NDRC’s website:
http://www.ndrc.gov.cn/xwzx/xwfb/201707/t20170710_854194.html

³ Zhejiang Provincial Price Bureau is a local counterpart of the NDRC who is in charge of the anti-monopoly matters in Zhejiang Province.

meeting, the attending parties agreed to collectively raise the price of whiteboard sheet rolls. In particular, the 17 paper manufacturers agreed to: (1) consciously implement the adjusted price; (2) increase the price in stages, with the first round being an increase of RMB 200 per ton; and (3) supervise each other and report any non-compliance to the Paper Manufacturers Association for its inspection and penalties in accordance with the so-called “self-discipline” rules.

From January to October 2016, the price of the whiteboard sheet rolls was relatively stable at RMB 2470 per ton. However, just after the meeting, in November 2016, all the conspiracy members raised the price of the whiteboard sheet rolls as agreed, forcing the average price to rise to RMB 2640 per ton. Furthermore, the involved manufacturers consistently increased the price causing the monthly average price to rise to RMB 3049 per ton -- a 23% increase compared with the pre-collusion price.

The Price Bureau held that the 17 paper manufacturers, as independent market participants that should have been competing with each other, violated Article 13(1) of the AML by reaching and implementing a horizontal price-fixing agreement. Additionally, the Paper Manufacturers Association breached Article 16 of the AML by organizing market players to arrive at a monopoly agreement.

A Recidivist being De-registered

In accordance with Articles 46 of the AML, the 17 companies were fined 1% of their sales from whiteboard sheet rolls of the previous year which totaled RMB 7.78 million. The penalty was relatively light as NDRC considered these companies’ cooperative attitude during the investigation and short period of monopolistic activity (i.e. two months) and willingness to rectify. In contrast, the Price Bureau levied the most severe penalty against the Paper Manufacturers Association - deregistration. Such a punishment came as the result of the Paper Manufacturers Association recidivist conduct – six years ago the NDRC levied a fine against it for monopolistic behavior of a similar nature.

In the beginning of 2011, the Paper Manufacturers Association organized a similar meeting with the same aim as the present case. After that meeting, the price of whiteboard sheet rolls was raised from RMB 200 to 300 per ton. At that time, the NDRC launched an investigation into their misconduct and fined the Paper Manufacturers Association RMB 500,000 for its leading role in the price-fixing collusion. In accordance with the AML, RMB 500,000 is the highest monetary penalty that can be levied against a trade association. Moreover, that was the first penalty the NDRC published after the Provisions on Anti-Price Monopoly went into effect. Even as the first published trade association to be subjected to the most severe monetary fine, the Paper Manufacturers Association clearly failed to learn a lesson from this punishment.

Indeed, the market share of Fuyang's whiteboard sheets plays a pivotal role in China: there are more than 1,300 paper manufacturing companies in the city. However, the fierce competition cannot become a justifiable excuse for any monopolistic behavior. Maybe the previous penalty was not a critical hit to the Paper Manufacturers Association; hence they arranged another meeting to coordinate increasing the paper price and followed through by significantly raising the price, again. This time, the Price Bureau ordered the Paper Manufacturers Association to be de-registered on the basis of Article 46(3) of the AML which provides that for a serious violation of the AML engaged by a trade association, the administrative department for the registration may cancel the registration of the trade association.

Trade Association in Spotlight

Up to now, the NDRC published 17 cases related to horizontal monopoly agreements; five of them were against trade associations. These cases involved a variety of industries including insurance, paper manufacturing, property management, and gold jewelry. Of these, two cases involved trade associations that received maximum fines of RMB 500,000. Additionally, in 2017, the NDRC fined two trade associations in one month. These active enforcement practices demonstrate that the NDRC has been more aggressive

in monitoring and investigating anti-competitive conduct of trade associations. In the future, trade associations should prepare diligently to meet the NDRC's stringent compliance challenges.

Draft Guidelines on Trade Association Pricing Activities

On 24 March 2017, the NDRC published its draft guidelines on price behavior of trade associations ("Guidelines") for public comment. It is aimed at promoting sound industrial development and fair competition, and protecting consumer rights and interests. The Guidelines will create a red line for cartels and regulate trade associations and their activities. At the same time, the Guidelines also give trade associations certain authority to bring benefits to their member companies.

Comment

Although trade associations are not directly involved in market participation, they are fully capable of organizing monopoly activities. In accordance with Article 16 of AML, trade associations shall not organize business operators in respective industries to engage in monopolistic acts. This is the first case where a trade association has been forced to de-register. Antitrust authorities, including the NDRC and the State Administration for Industry and Commerce, may now ramp up their surveillance of anti-competition appearance. Therefore, trade associations should enhance their awareness of antitrust law and improve their compliance system. Also, the Guidelines are expected to be adopted later this year and will have certain regulatory effects. Most importantly, during an antitrust investigation, trade associations should cooperate with the enforcement authority in order to reduce the potential administrative penalties. In any event, trade associations should not attempt to repeat any sanctioned behavior or even begin to engage in such conduct. Otherwise a serious violation of anti-monopoly law could subject them to deregistration.