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Investigations in the auto-parts sector.

As part of the global crackdown on auto parts makers, which started in 2010, when regulators in the United States, Europe and Japan, commenced their investigations into wire harnesses, China – the world's biggest car market – has recently started to clean its local market from two ends. During summer, the powerful National Development and Reform Commission ("**NDRC**") and local bureaus imposed record fines on automotive companies for allegedly over-priced spare parts and only a few days ago, ten Chinese ministries have published a new framework to remove global car makers' tight control over the supply and price of spare parts and the limited network of vendors operating in the Chinese market.

A Hot Summer for the Car Industry in China

On 20 August, China's NDRC announced that it had imposed its heaviest fine to date, totalling RMB 1.24 billion (USD 210 million), for violating the Anti-Monopoly Law ("**AML**") by conspiring to fix prices. According to public statements made by NDRC officials, the penalty was hefty as the conduct lasted for over a decade which made it more harmful to the market. Fines were imposed against eight Japanese car-parts companies as well as four Japanese bearing manufacturers. The alleged anti-competitive conduct related to price fixing for bearings as well as 13 other parts products, including starter motors and alternators. Two leniency applicants were exempted from penalties and two companies being second in reporting the conduct and providing information were fined 4% of their respective revenues of the previous years, while all other companies were fined 6% (in case of mitigating circumstances) or 8%. Fines of 8% mark the highest level of penalty imposed so far and can be seen as a guide for cases of "severe illegal circumstances", while for less severe infringements 5 to 8% is the guide. In the present case, fines were calculated based on sales of products in China, which differs from the approach adopted by other major authorities, such as in the European Union (using global sales of the corporate group in order to calculate the upper limit of fines). In the present case, the companies were also ordered to correct their commercial policy on the Chinese market. Different from previous cases (like the 2013 investigation into liquid crystal displays), NDRC did not confiscate illegal gains, reportedly because of difficulties in calculating the appropriate numbers.

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The investigation was initiated following dawn raids conducted by the authority back in March 2014 at the premises of Hitachi, which a few weeks later self-reported to NDRC about its monopolistic agreements and provided written evidence. Hitachi was granted immunity from fines as a result of its comprehensive cooperation with NDRC. In the course of its investigation, it is reported that NDRC sent various questionnaires to companies active in the sector and summoned a large number of management personnel. As the conduct happened a long while ago, NDRC ultimately largely relied on written evidence. Reportedly, (at least) one company made a comprehensive defence submission which ultimately led to a penalty reduction of RMB 53 million (USD 8.5 million). NDRC announced that it will continue to investigate into other illegal leads it gathered from this investigation.

At the same time, vertical restraints in the auto-sales area continue to be a top priority in NDRC’s enforcement work. This is clearly confirmed by some heavy fines which were imposed more recently. On 12 September, the Hubei Province Price Bureau and the Shanghai branch of NDRC fined FAW-Volkswagen together with eight Audi-dealers as well as Chrysler for price fixing among distributors for auto sales and repair services. In total fines amounted to RMB 279 million (USD 46 million). Additional fines were imposed against dealers for European luxury cars, including BMW and Mercedes, for coordination on “pre-delivery inspection” fees. It is expected that more fines will follow in the next weeks and months and car companies may face strong headwinds during autumn.

Clearing the Road Ahead

Amid the recent intensified antitrust enforcement in the automotive sector, ten Chinese ministries (including the Ministry of Transportation and NDRC) jointly released guidelines for the car repair sector. The document, entitled *Guidelines for the Promotion of the Transformation and Improvement of the Automotive Repair Sector and for the Improvement of Service Quality* (《关于促进汽车维修业转型升级、提升服务质量的指导意见》, the “**Guidelines**”) was officially published on 18 September. The Guidelines, which set out the government’s policy goals for the automotive repair sectors, came into force with immediate effect, but certain specific requirement will only become effective on 1 January 2015.

From a competition law perspective, a highlight of the Guidelines is that, starting from 1 January 2015, for new car models (including imported cars), Original Equipment Manufacturers (“**OEMs**”) will be required to make repair technology and underlying documentation available to both authorised repair companies and independent aftermarket service providers. This new rule seems to follow the European Commission’s footsteps in its 2007-investigation in Daimler’s, Fiat’s, Toyota’s and Opel’s practices as regards the supply of technical information for the repair of their vehicles. The Commission forced the companies into a settlement, obliging the OEMs to establish an effective system in the form of a website to allow independent repairers to have access to technical repair information at a fixed price. Similar to the Commission’s approach, the Guidelines oblige car makers to provide required information in a non-discriminatory manner and at reasonable prices. Also OEMs need to ensure that they comply with the obligations without undue delays. By giving independent repairers access to technical information necessary to the repair of vehicles, the Guidelines are meant to create a level playing field for both authorised and independent repairers.

In addition, the Guidelines aim to diversify sales channels for parts by lifting the restrictions previously imposed on parts makers/repairers to prohibit them from selling their products to the independent aftermarket. Specifically, the Guidelines encourage OEM parts manufacturers to provide the aftermarket with OEM parts and independent aftermarket parts bearing the manufacturers' trademark, and allow authorised dealers/repairers to resell OEM parts to unauthorised repairers or end-users.

Finally, the Guidelines also oblige OEMs and authorised repairers to no longer prohibit customers from using independent repairers during the warranty period.

While the Guidelines are not directly enforceable and do not contain any sanctions in case of non-compliance, it presents the governments' policy trend. One may expect that the ministries would publish implementation guidelines, introducing fines or other sanctions or make reference to the Guidelines when they are enforcing the law which is in place (including the AML) in order to oblige companies to comply with the Guidelines.

The Guidelines are part of China's intensified efforts to bring companies into compliance with the AML. While some of the provisions in the Guidelines lack clarity, it is strongly recommended to conduct or complete internal audits of commercial terms and business practices, and to ensure all relevant personnel receive adequate training to ensure an appropriate level of compliance and avoid further scrutiny.

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