

Interview with Ning Wanglu, Director General of the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau Under the State Administration for Industry and Commerce of People's Republic of China

Editor's Note: It has been over two years since China's Anti-Monopoly Law (AML) took effect, in August 2008. Three government agencies split enforcement responsibilities under the AML. The State Administration for Industry and Commerce (SAIC) is in charge of regulating non-price related anticompetitive conduct. In this interview with The Antitrust Source, Mr. Ning Wanglu, the Director General of the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of SAIC, discusses the structure and function of the agency, the enforcement activities to date, and the regulatory rules that SAIC has issued so far. DG Ning also provides helpful perspectives on law enforcement in the areas of intersection between SAIC and the National Development and Reform Commission (NDRC), and between the AML and China's Anti-Unfair Competition Law.

DG Ning has long been involved in the drafting and enforcement of China's competition and market regulation laws, including the Anti-Unfair Competition Law and the AML. He joined SAIC in 1982. Before he chaired the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau, he had served in various positions in the China Consumer Association and several other bureaus within the SAIC, including the Market Regulation Bureau and the former Fair Trade Bureau. DG Ning holds a bachelor's degree in Economics, and is a board member of the China Law Society.

This interview was conducted on January 7, 2011, by Fei Deng and Yizhe Zhang for The Antitrust Source. We would like to express our thanks to DG Ning for sharing his view with us, and to Ms. Song Yue of SAIC, also present at the interview, for facilitating the process.

—FEI DENG, H. STEPHEN HARRIS, JR., AND YIZHE ZHANG



DG Ning Wanglu

THE ANTITRUST SOURCE: Could you please explain the functions and structure of the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau under SAIC? Also, could you please describe your involvement in the drafting of the AML?

DIRECTOR GENERAL NING WANGLU: The main functions of the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau under SAIC include: drafting rules and regulations related to anti-monopoly and anti-unfair competition; undertaking enforcement of the AML in the relevant areas; regulating unfair competition, commercial bribery and other law-breaking economic and market activities; and monitoring important and exemplary cases. The main divisions under the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau include the Anti-Monopoly Law Enforcement Division, the Anti-Monopoly Legislative Affairs Division, the Anti-Unfair Competition Division, and the Case Inspection Division. In China, the legal responsibility for enforcement of the AML resides at the national level. The national-level antitrust enforcement agency can empower a provincial-level antitrust agency to investigate cases based on the AML. Currently, there are a total of around one thousand competition enforcement staff persons at the national and the provincial levels of the Administration for Industry and Commerce.

Along with the development of a reform and open-door policy and market economy, the Chinese government has paid great attention to building and improving the competition law mechanism. In 1987 we started drafting the Anti-Unfair Competition Law, which regulates both anti-unfair competition activities and some other activities that restrict competition, so this single law serves two purposes. In 1993, after the Anti-Unfair Competition Law went into effect, an AML drafting team was set up consisting of officials from SAIC, the former State Economic and Trade Commission, and other agencies to begin the research and drafting work of the AML. After many years of work, the AML was promulgated in 2007 and came into effect in 2008.

ANTITRUST SOURCE: It has been about two and a half years since the AML came into effect. Could you summarize the enforcement of the AML by SAIC and the regulations or rules that have been issued so far?

DG NING WANGLU: Since the AML came into effect, we have been making positive progress in rule-making and enforcement in areas that fall into our areas of responsibility. First, we have been actively drafting supporting regulations. Up to now, we have promulgated five regulations under the AML, including two procedural regulations issued in 2009—*Procedural Regulation of the Administration for Industry and Commerce on Prevention of the Abuse of Administrative Power to Eliminate or Restrict Competition*; and *Procedural Regulation of the Administration for Industry and Commerce on Investigation and Prosecution of Cases Involving Monopoly Agreements and Abuse of Market Dominance*—and three substantive rules passed on December 30, 2010—*Regulation of the Administration for Industry and Commerce on Prohibition of Monopoly Agreements*; *Regulation of the Administration for Industry and Commerce on Prohibition of Abuse of Market Dominance*; and *Regulation of the Administration for Industry and Commerce on Prohibition of Abuse of Administrative Power to Eliminate or Restrict Competition*. Throughout the drafting process we have sought advice and comments widely through various channels, from both domestic and foreign parties, and we have referred to and absorbed many useful foreign experiences and methods.

Second, understanding that training is essential to improving our enforcers' knowledge level, we have organized a variety of training sessions for our enforcement officials. These training sessions include those held in individual provinces; those co-organized with enforcement agencies and institutions from other countries and regions such as the United States and the European Union; and visits to enforcement agencies and institutions in other countries and regions. Also, together with MOFCOM and NDRC, we have held teaching seminars to provincial officials and managers of large state owned enterprises.

Third, we have steadfastly undertaken enforcement work. Following the implementation of the AML, we have received a large number of complaints. We have investigated and prosecuted those that are relevant to anti-monopoly. Faced with the international financial crisis, we have strengthened the implementation of competition law by investigating and prosecuting activities that restricted competition involving parties, such as public enterprises and activities that eliminated or restricted competition by abuse of administrative power.

Fourth, under the guidance of the Anti-Monopoly Commission under the State Council, we have been working with MOFCOM and NDRC to study the state of competition in certain important industries.

Fifth, we have continued to deepen international cooperation. We have strengthened international exchanges with countries, such as the United States, European Union, Japan, Russia,

India, Brazil, and Korea. In 2009, together with Russia, Brazil, and India, we held the BRIC International Competition Conference, with participation from representatives from over forty countries and international organizations. Topics, such as the development of competition policy, law enforcement, and promotion of competition policy, were discussed extensively during the conference.

ANTITRUST SOURCE: What are the current priorities of SAIC? Are there any new guidelines or rules being drafted? Are there any particular industries that are of higher priority for investigation? Do you envision the priorities to change over the next few years?

DG NING WANGLU: It is unavoidable that the recent international economic crisis has generated negative effects on China's economic development. It has always been our view that effective market competition is the best tool for fighting against economic crisis. Thus, the priority of SAIC's enforcement has been to prohibit local protectionism and industry monopoly. During year 2010, the Administration for Industry and Commerce at all levels has prosecuted 645 cases involving various types of activities that restricted competition.

Based on our current situation, we will be focusing on the following four areas in the near future: (1) continue the legislative work based on issues we encounter in our practical experience; (2) continue to train our officials, especially in the areas of law and economics—talent building is a basic and long process; (3) continue to improve our enforcement work. We have achieved good results in guiding the provincial level of the Administration for Industry and Commerce to prosecute monopoly activities, and we are going to continue that work. And lastly, (4) We will continue to promote and educate the public about the AML.

ANTITRUST SOURCE: We understand that SAIC is responsible for investigating and sanctioning any anticompetitive agreements, abuses of dominant market positions, and abuses of administrative power that are not related to pricing conduct, while the NDRC covers essentially the same types of conduct as SAIC in cases where the conduct is price-related. For cases that involve both types of conduct, there would be coordination between SAIC and NDRC. Can you describe how the coordination would be achieved? Have there been actual cases to date that involved close coordination between the two agencies?

DG NING WANGLU: There are clear divisions between SAIC's and NDRC's responsibilities in anti-monopoly, as mandated by the State Council. The two agencies have smooth information exchange channels and have cooperated closely. In 2010, we have experimented with NDRC in setting up a case coordination mechanism. For cases that involve both price and non-price related conduct that require prosecution by both agencies, we would cooperate closely. In fact, our first anti-monopoly case was prosecuted together with NDRC and other relevant departments.

ANTITRUST SOURCE: In addition to the AML, there are also other laws related to non-price related competition issues, such as the Unfair Competition Law. Would the AML supersede these other laws? How would SAIC's procedures under the AML differ from those it used under the other laws? Are there types of cases in which both laws will be applied?

DG NING WANGLU: It is crucial that prosecution of a case be based on the nature and characteristics of the conduct in order to correctly and properly implement the law. It is unsurprising that dif-

ferent laws would apply to conduct that has limited effects versus conduct that has systematic effects and harms consumers' overall welfare. Taking the AML as an example, the AML governs those anti-monopoly issues that would have a systematic and macro-level impact and applies mainly to those anti-monopoly cases that severely impact market competition and harm consumer welfare. This characteristic differentiates the AML from other competition laws in terms of application. There are other differences, such as that the enforcement of the AML requires collecting substantial amounts of economic data, building economic models, defining relevant markets, and analyzing market dominance. Also, in terms of mechanism design, the AML contains leniency and commitment provisions, which are not available under other competition law enforcement procedures.

ANTITRUST SOURCE: What causes SAIC to open an investigation? Have you received many customer or competitor complaints? What kinds of investigative methods are currently employed by SAIC? How does SAIC collect information and evidence related to a complaint?

DG NING WANGLU: Since the implementation of the AML, SAIC has received a large number of complaints, coming from a wide range of parties, including enterprises, consumers, and lawyers. SAIC pays attention to complaints because this is a very important channel through which we can discover monopoly behavior.

The AML contains general provisions that govern the investigation of anti-monopoly behavior. In order to provide further details, SAIC issued the two procedural rules in 2009, which contain provisions governing the handling of complaints, case acceptance and investigation, and case closing. We place a complaint in one of three categories: (1) if the conduct involved does not fall within our anti-monopoly function responsibility, we would pass the case on to the relevant agency; (2) if after initial investigation, the complaint does not reflect the actual situation, we would explain the reason and situation to the party submitting the complaint; (3) if after initial investigation, the complaint seems to reflect mostly the actual situation, we would accept the case and start further investigation. During the investigation, we would utilize all the methods and tools authorized by the AML. Of course, we would give the targeted parties enough chance to make their own statement, and we strictly protect the confidentiality of the trade secrets involved in the investigation.

ANTITRUST SOURCE: Are there any industries that would be exempt from SAIC investigation, such as industries consisting mostly of State Owned Enterprises?

DG NING WANGLU: The AML applies to all industries and entities equally. Item 2 under Article 7 of the AML specifies clearly that State Owned Enterprises "shall conduct their business in accordance with law in an honest and trustworthy manner, impose strict self-discipline, and accept supervision from the public. These undertakings shall not harm the interests of consumers by making use of their position of control or their position of exclusive and monopolistic sales." This indicates that State Owned Enterprises should also be under the regulation of the AML. All entities are treated the same in the eyes of the law.

ANTITRUST SOURCE: In your view, what are some of the current challenges that SAIC faces?

DG NING WANGLU: Currently, there has been an increasing trend toward global economic integration. It is a common challenge faced by antitrust enforcement agencies all over the world as to

how to regulate effectively the economic activities that involve a large geographic area or that are global. We need to further strengthen international cooperation and improve the effectiveness of the global cooperation of competition law enforcement. Nowadays, along with the prosperous development of the market economy, the goal of the Chinese competition law enforcement agencies has been to strive for improving the efficiency of economic operation, enhancing sustainable economic development, and achieving optimization of consumer welfare. In the future, we will continue to contribute to the sustainable, healthy, and stable development of China's economy by enforcing the law fairly and equitably.

ANTITRUST SOURCE: Director-General Ning, thank you very much for sharing your views on these important issues with us. ●