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What should Businesses Watch out for in Light of New PRC Anti-Trust Law?

By David Yu and Sam Feng

Adopted on 30 August 2007, the Anti-trust Law of the People's Republic of China ("**Anti-trust Law**") will come into force on 1 August 2008. Since the violation of the Anti-trust Law could subject a company to sever fines and lawsuits for damages, it is important for businesses to ensure full compliance. There are no winners in anti-trust actions. Even a successful defense of an anti-trust action may be extremely expensive, time-consuming and disruptive of business operations. No imagined gain is worth the risk of violating the Anti-trust Law. The following are the typical kinds of anti-trust violations, which a company should watch out for in its daily operations:

- What is an "Agreement"? Under the Anti-trust Law, an illegal "agreement" with a competitor or customer needs not to be expressly stated or in writing. It may be silent or tacit, with no formal offer or acceptance. Also, there is no "an off the record" conversation or "gentleman's agreement". Anything an employee says to or writes to a competitor or customer can be used as evidence in the investigation or lawsuit against the company.

- No Price-Fixing. Price-fixing agreements among competitors are a typical type of anti-trust violation. Price-fixing prohibition applies broadly to any understanding or agreement with respect to prices as well as other terms and conditions of sale. "Price-fixing" can occur even if there is no agreement on specific prices, but only by understanding among competitors to raise, lower or even just to stabilize prices of products or services. In addition, companies can be found violating price-fixing even if the agreement fails to achieve its original purposes.

- No Allocation of Sales, Procurement or Markets. Agreements among competitors or potential competitors restricting the quantities of products or raw materials that are to be produced, sold, purchased or marketed, or concerning the allocation of sales and procurement markets, are often considered by the Anti-trust Law to be just as serious as price-fixing.

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- Other Illegal Agreements. Any other agreements that intend to reduce competition, such as restrictions on the development or procurement of new technology, equipment or products, or agreements for boycotting suppliers or purchasers, are also considered as illegal agreements and actions. Also some kinds of agreements with customers are also prohibited under the Anti-trust Law. For example, agreements that fix, or limit the low end of, the price of goods at which the customer resells the goods to third parties is not allowed.

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