

CONDITIONS OF SALE CARTEL—ANALYSIS OF BULL ANTITRUST CASE*

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Abstract

Nowadays, the anti-monopoly laws of all countries in the world are not only applicable to the restricted competition generated within domestic, but also applicable to the restricted competition generated abroad but having an adverse impact on domestic market. However, some cases involving international cartels in recent years show that the excessive extraterritorial application of anti-monopoly law is not feasible, because it may not only produce jurisdictional and legal conflicts between countries, but also bring unreasonable economic burden to enterprises. According to the internationally recognized principles, the extraterritorial application of antitrust should be based on the "significant, direct and reasonably foreseeable" effect of overseas competition restriction on China. Several international cartel cases in China so far show that China has accepted this principle. In view of the fact that China has become an important place for the business activities of multinational corporations and the complexity of international economic activities, China should make clear provisions on the basic principles of extraterritorial application of antitrust in order to improve the transparency and predictability of antitrust law enforcement.

Keywords: Antimonopoly Law; Cartel, Monopoly Agreement

Introduction

Cartel is an organization composed of a series of independent enterprises producing similar products and producers of collective action, with the purpose of raising the price of such products and controlling their output. Cartels are illegal under US antitrust law (Wang, 2018). Monopoly interest group, monopoly alliance, enterprise alliance and cartel, also known as cartel, is one of the forms of monopoly organization. In order to monopolize the market and obtain high profits, enterprises producing or selling a certain kind of goods form an alliance by concluding agreements on commodity price, output and sales (Lin and Sun, 2017). Members of the alliance remain independent in production, commerce, and law. Nowadays, the anti-monopoly laws of most countries and regions in the world are not only applicable to the restricted competition generated within domestic, but also applicable to the restricted competition generated abroad but having an adverse impact on the domestic market (Qiao, 2014). The anti-monopoly law applies to the restriction of competition generated abroad, which is called the extraterritorial application of the anti-monopoly law (Wang, 2012). This paper focuses on several international price cartels in the extraterritorial application of China's anti-monopoly law, compares and studies relevant cases, and emphasizes that the extraterritorial application of anti-monopoly law should be conditional on the direct, significant and reasonably foreseeable effect of overseas restricted competition on China.

With the implementation of China's Anti-monopoly Law Article 2 of the Anti-monopoly Law, China's anti-monopoly law has produced two important consequences: first, the scope of application of this law is extended to those enterprises that have their residence or

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business place in foreign countries. If they plan or implement the restriction of competition in foreign countries, it will have an adverse impact on China's market. Second, the application of the law to Chinese enterprises engaged in business activities in the international market is limited if their restricted competition has no impact on the Chinese market.

Research Objectives

The study investigates the concepts, opinions, and experiences in Bull Group's anti-monopoly in the main.

Literature Review

Cartel is an organization composed of a series of independent enterprises producing similar products and producers of collective action, with the purpose of raising the price of such products and controlling their output. Cartels are illegal under US antitrust law (Wang and Xu, 2017). Monopoly interest group, monopoly alliance, enterprise alliance and cartel, also known as cartel, is one of the forms of monopoly organization. In order to monopolize the market and obtain high profits, enterprises producing or selling a certain kind of goods form an alliance by concluding agreements on commodity price, output and sales. Members of the alliance remain independent in production, commerce, and law (Zhang, 2018). Nowadays, the anti-monopoly laws of most countries and regions in the world are not only applicable to the restricted competition generated within domestic, but also applicable to the restricted competition generated abroad but having an adverse impact on the domestic market. The anti-monopoly law applies to the restriction of competition generated abroad, which is called the extraterritorial application of the anti-monopoly law.

In the Law Cartel has two meanings: Refers to the Cartel contract, second refers to the cartel resolution, cartel contract and F-ter resolution are collectively referred to as the cartel agreement Abbreviated as cartel. According to the definition of paragraph -, paragraph of Article 1 of the Law Carter means "a contract concluded by a corporation or a consortium of enterprises for the purpose of achieving a common purpose." and enterprises in the united Taiwan organization made resolutions "force these contracts and resolutions to limit competition Can affect the production of goods or the market for the trading of goods or services in relation to two separately Cartel resolutions also include resolutions of the general assembly of members of legal persons, provided that the members of a legal person must be enterprises.

Constituent elements of a cartel. According to this statutory definition, Carter consists of four elements: the subject of the cartel, the conclusion of a contract or a decision to achieve a common purpose, the use of acts that restrict competition to affect market relations, and the link between contracts or resolutions to restrict competition and market relations, which are described below :(1). The main body of the cartel is an enterprise or a consortium of enterprises, and only entities that have the nature of an "enterprise" may enter into a wooden contract or a cartel Resolution O(2) ft The industry or the consortium must conclude a contract or make a resolution for the purpose of achieving a common purpose, which in turn includes two aspects, one is to conclude a contract or make a decision One: It is to reach a common goal. (3) Enterprises or conglomerates must restrict competition. To hedge the impact on the production and marketing of goods or services, (4) there must be a relationship between contracts or decisions concluded by enterprises or joint ventures and restrictions on competition and impact on market relations.

According to the content of the cartel, people divide the common cartels in practice into the following categories : (1) price carters, including cartels with fixed prices, cartels related to price components or price calculation methods, such as cartels on discounts, price relations, maximum prices and gross prices; (2) restrict the production of cartels, such as limiting the supply quantity, Cartels that reduce production capacity N3) divide market cartels, including cartels that divide sales territories, allocate or limit the number of sales, etc.; (4) Collusive bidding cartels, such as Carbile that stipulates that certain enterprises will not participate in bidding, cartels that stipulate the highest or lowest bid prices, etc. These cartels are established between suppliers (producers, sellers). On the demand side, it is also possible for demand companies to enter into a carator. The content of such cartels usually involves the purchase price, discount, purchase conditions and purchase restrictions.

In addition, carters can be divided into two categories, namely prohibited cartels and legal cartels, depending on whether they are prohibited by law. The first sentence of the first paragraph of article 1 of the "Law" stipulates: "Contracts concluded by enterprises or joint enterprise organizations for the purpose of achieving common purposes, as well as resolutions made by enterprise joint organizations, are invalid if they restrict competition and can affect the market relations between the production of commodities or the trading of goods or services." It can be seen from this that as long as the constituent elements of the cartel are met. Cartels are "ineffective". This civil consequence of cartels applies in principle to all cartels of all content and form, unless otherwise provided by law. If the person concerned ignores the ineffectiveness of the cartel and continues to carry out carters, it may constitute an act contrary to social order. The Carter authorities have the power to order the parties concerned to stop committing such acts and impose fines on the offenders. A person who violates the prohibitions of the law or the relevant sanctions of the cartel authorities may also bear civil liability for damages. furthermore. When examining the legal consequences of cartels, it is also necessary to pay attention to the exceptions in the field of application of the Law. The "Law" stipulates that the prohibited provisions of this Law shall not apply or not be fully applicable in the fields of transportation, agriculture, forestry and fishery, finance and insurance, copyright protection, and energy supply. Thus the principle of banning cartels also does not apply or does not apply in full in these areas. The formulators of the "Law" held that the act of concluding cartel meetings or jointly organizing cartel resolutions between enterprises is lawful in terms of the overall economic interests of these economic fields.

This paper focuses on several international price cartels in the extraterritorial application of China's anti-monopoly law, compares and studies relevant cases, and emphasizes that the extraterritorial application of anti-monopoly law should be conditional on the direct, significant and reasonably foreseeable effect of overseas restricted competition on China.

Research Methodology

This study uses a qualitative research approach to collect and analyse non-numerical data to understand concepts, opinions, or experiences. It can be used to gather in-depth insights into a problem or generate new ideas for research. Qualitative research is the opposite of quantitative research, which involves collecting and analyzing numerical data for statistical analysis.

Findings and analysis

The "Socket brother" Bull Group's anti-monopoly case is believed to be familiar to the public. Bull Group announced that the company was fined about 295 million yuan for violating the anti-monopoly law. It is reported that this case is the largest antitrust "ticket" issued by Zhejiang Market Supervision Bureau since the institutional reform. In the view of insiders, Bull Group has been punished for breaking the law, breaking its monopoly at the price level, and its price control profit advantage has disappeared. With the intensification of socket market competition, Bull group will face many challenges. According to the announcement of Bull Group, the group received the decision on administrative punishment issued by Zhejiang Municipal Bureau of Supervision. Bull Group violated the provisions of Article 14 of the anti-monopoly law of the people's Republic of China, which "prohibits the operator and the trading counterpart from reaching the following monopoly agreements: (I) fixing the price of goods resold to a third party; (II) limiting the minimum price of goods resold to a third party", It constitutes the act of reaching and implementing a monopoly agreement with the counterpart.

Zhejiang Municipal Bureau of Supervision ordered bull group to stop its illegal acts and imposed the following administrative penalties: a fine of 3% of China's domestic sales of 9.827 billion yuan in 2020, totaling 295 million yuan. Although the bull group did not disclose details in the announcement, it learned from the punishment announcement issued by Zhejiang Municipal Bureau of Supervision that the bull group has worked with its trading counterparts (dealers) in the sales channels of converters, wall switch sockets, LED lighting, digital accessories and other power connection and power extension products nationwide (excluding Hong Kong, Macao and Taiwan) since 2014-2020. The conclusion and implementation of monopoly agreements with fixed and limited prices have excluded and restricted market competition and damaged the interests of consumers.

It is understood that monopoly is roughly divided into vertical monopoly and horizontal monopoly. Horizontal monopoly is the combination of multiple manufacturers. Vertical monopoly is also known as price monopoly. It is the behavior of unifying prices within a single manufacturer. Bull group violates the vertical monopoly. In this regard, Chinese scholars say that the price control monopoly of bull group inhibits the market from playing the role of an invisible hand in resource allocation. The price should depend on the equal game and rational negotiation between the supplier and the demander, rather than the unilateral decision of the manufacturer. Fixing the price of resale goods violates the principle of freedom of contract. The price should be determined by the buyer and the seller, and bull group has no right to fix the price unilaterally.

Bull group was investigated by antitrust in the first half of 2020. On May 12, bull group announced that on May 11, the company received the letter of Zhejiang Market Supervision Administration on reporting the case filing of Bull Group Co., Ltd. suspected of reaching and implementing monopoly agreement with the trading counterpart from Zhejiang Municipal Supervision Bureau, which "decided to file and investigate the suspected monopoly agreement reached and implemented by bull group with the trading counterpart."

However, in the prospectus previously released by bull group, it disclosed that "the company comprehensively considers the market positioning of products, brand positioning and influence, past prices of similar products and market prices of similar products to determine the price guidance system, and determines the supply price of the company to dealers according to the evaluation of product competitiveness and reasonable profits in circulation".

In addition to price control monopoly, bull group also has exclusive sales. In its prospectus, bull group disclosed that in terms of the most core converter business, dealers are required to specialize in exclusive sales, that is, dealers can no longer sell sockets of other brands; In terms of wall opening, dealers in municipalities directly under the central government, cities specifically designated in the state plan and provincial capital cities are also franchised. At the same time, in the official joining conditions of bull group, the franchisee is also required to "highly recognize the bull's business philosophy and be willing to abide by the exclusive sales rules".

Although bull group said in the announcement that the punishment will not have a great impact on the company. However, according to its announcement, the penalty amount is expected to reduce the profit of bull group by 295 million yuan in 2021. In the view of new retail experts in the FMCG industry, the huge punishment will bring great warning to enterprises, which will greatly reduce the monopoly behavior of large enterprises in the future development of the industry. This kind of monopoly behavior can make some enterprises still profit without paying attention to product R & D and weak competitiveness.

It is understood that the bull group is facing many challenges in the socket market. In the prospectus of the bull group, Xiaomi and Philips were listed as competitors. It is understood that at present, the sales channels of Xiaomi products have fully covered online and offline, benefiting from its own channel advantages, and Xiaomi sockets can be seen everywhere. Some data show that the first plug-in with USB fast charging launched by Xiaomi in 2015 has become a popular model as soon as it is listed. At the same time, deli and Philips also continue to layout the socket market, which poses a certain challenge to bull group.

Combined with the foregoing and the punishment decision, the question in the Bull group case is: do we need to determine whether the behavior of the Bull group limits the competition between different brand merchants (manufacturers)? Or to determine whether it limits the competition between upstream and downstream enterprises in the same brand and enterprises in different regions.

Before answering this question, it must be clear that the relevant commodity market is very broad. There can be multiple subjects participating in the market (not only manufacturers), but also market segments, including production, sales (direct sales / distribution), after-sales service (if any), logistics and distribution (if any). In each case, it can not be ruled out that it may be specific to these market segments to judge the effect of restricting competition. At least, it should not be said that it is wrong to restrict the judgment in the field of segmentation.

The Antimonopoly Commission of the State Council of China formulated and issued the antimonopoly guidelines of the Antimonopoly Commission of the State Council in the field of platform economy. In response to a reporter's interview, the person in charge of the office of the anti-monopoly Commission of the State Council said that in recent years, China's platform economy has developed rapidly, and new formats and models have emerged one after another, which has played an important role in promoting high-quality economic development and meeting the people's growing needs for a better life. However, at the same time, there are increasing reports and reports of suspected monopoly problems such as operators in the platform economy requiring businesses to "choose one from two", "kill mature big data" and failing to declare and implement business concentration according to law. These behaviors damage fair competition in the market and the legitimate rights and interests of consumers. They are not conducive to fully stimulating the innovation and creativity of the whole society,

promoting the innovation and development of the platform economy, and building new advantages and new driving forces for economic and social development.

The author suggests that the State Administration of Market Supervision and the Central Commission for Discipline Inspection should timely organize a comprehensive inventory of the problems of anti-monopoly law enforcement personnel assisting illegal operators in eliminating illegal evidence and giving them a lighter punishment or no punishment in individual cases, so as to greatly improve the transparency of anti-monopoly law enforcement while ensuring the fairness, transparency and predictability of strengthening anti-monopoly law enforcement, We will strengthen anti-corruption and anti-corrosion work and protect the interests of the broad masses of the people according to law. At the same time, the author also calls on the State Administration of Market Supervision and administration to carry out relevant antitrust investigations in the name of the general administration when the violation of the antitrust law by operators involves the national market, or designate other provinces other than the domicile of suspected illegal operators to exercise jurisdiction, so as to ensure the objectivity and neutrality of relevant law enforcement and practice the principle that violations must be investigated and law enforcement must be strict. If so, I'm afraid the bull group case will not be punished so lightly by Zhejiang Municipal Bureau of supervision. Similarly, the antitrust investigation of Tianjin Municipal Bureau of supervision on TIANYAO group involved in the fluoroacetate API case should not stop at the investigation of violations in the fluoroacetate API market, At the same time, it has not traced other acts of restricting competition suspected in the downstream preparation market. The State Administration of market supervision has focused on strengthening the supervision of anti-monopoly and anti unfair competition law enforcement. "In promoting and strengthening the construction of the anti-monopoly law enforcement team, we urged the general administration to fulfill its main responsibilities, pay close attention to key posts and key personnel, and strengthen education and management. In view of the situation that relevant staff of the General Administration enter large Internet enterprises after resigning, we improved the systems of non competition and declassification period; for the collusion and transfer of interests between anti-monopoly law enforcement staff and relevant enterprises, The author also once again calls on the State Administration of market supervision to comprehensively improve the transparency of anti-monopoly law enforcement, such as timely disclosure of relevant investigations after on-site surprise inspection, so as to avoid inducing insider trading.

Several international cartel cases in China so far show that China has accepted this principle. In view of the fact that China has become an important place for the business activities of multinational corporations and the complexity of international economic activities, China should make clear provisions on the basic principles of extraterritorial application of antitrust in order to improve the transparency and predictability of antitrust law enforcement.

Conclusion and significance

This paper has focused on several international price cartels in the extraterritorial application of China's anti-monopoly law and compares and studies relevant cases. And the paper found out that the extraterritorial application of anti-monopoly law should be conditional on the direct, significant and reasonably foreseeable effect of overseas restricted competition on China.

The first international cartel case handled by China's anti-monopoly law enforcement authorities. Although China's punishment for LCD cartel case is not strong, it is the first

international cartel case handled by China's anti-monopoly law enforcement authority, and its impact is still great. This case sends a signal to the international community and multinational corporations that China's price law and anti-monopoly law have the effect of extraterritorial application. That is to say, although Article 2 of the price law stipulates that "this Law applies to price acts occurring within the territory of the People's Republic of China", it does not exclude the jurisdiction of law enforcement agencies over this international cartel, because "place of price act" can be understood not only as "place of price collusion", but also as "place of implementation of price cartel". Since the anti-monopoly laws of all countries in the world and even China's price law have the effect of extraterritorial application, international cartels will be punished by the anti-monopoly law enforcement authorities of many countries and regions at the same time.

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