Further perfecting the legal system of competition in China by antimonopoly legislation
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It's my great honor to have this opportunity to introduce you China’s current competition law and the future direction China is taking to perfect the legal system of competition. I believe that the views exchanged and shared in this situation could be of great help for member economies to perfect their competition policies and to strengthen their cooperation and coordination in the field of competition law and policy.

The People’s Republic of China has made rapid progress on her way to socialist market economy, which should be safeguarded by a good legal system. The Chinese government has been taking the measures to establish and improve the legal system on competition. A perfect legal system of competition in China will conclude the anti-unfair competition law and the anti-monopoly law. The former, The Law of the People’s Republic of China for Countering Unfair Competition (hereinafter refers to the Law for Countering Unfair Competition) was promulgated in September 2, 1993, and the latter, the Antimonopoly law is under intense drafting. In addition, there are some provisions regulating unfair competitions in other economic laws and regulations, such as provisions in the Law of the People’s Republic of China on pricing, the Law of the People’s Republic of China on bidding, the Regulations of the People’s Republic of China on Tele-communications, etc.

I. The main contents and enforcement of the Law for Countering Unfair Competition

1. The Main Contents of the Law for Countering Unfair Competition

**The framework of regulations:** The Law for Countering Unfair Competition regulates not only the unfair competitive practice which violates the principle of
honesty and trust but also some restrictive practices on competition. It specifically includes 11 categories of conducts. (1) Transactions adopting counterfeit or obscure means (Article No.5); (2) Transactions of commercial bribery (Article No.8); (3) Transactions of issuing false or misleading advertisements (Article No.9); (4) Transactions of infringing other’s commercial secrets (Article No.10); (5) Transaction of unfair prize-attached selling (Article No.13); (6) Transactions of commercial slander (Article No.14); (7) Transactions of forcing to deal of public enterprises or other operators with monopolistic position (Article No.6); (8) Restrictive practices on market competition by abusing administrative power (Article No.7); (9) Transactions of predatory pricing (Article No.11); (10) Transaction of tie in sale or sale attaching unreasonable conditions (Article No.12); (11) Transaction of bid rigging (Article No.15). Among these transactions, the former six categories belong to the behaviors of unfair competition while the others fall into the category of restrictive practices. The Law for Countering Unfair Competition stipulates civil, administrative and criminal sanctions for these conducts. The administrative sanction is the key point of the law, which includes “instructing to stop illegal practices”, “confiscating the illegal income”, “imposing a fine”, “revoking the business license” and so on.

**Enforcement agencies:** According to the Law for Countering Unfair Competition, the Administrations for Industry & Commerce (AICs) are the competent authorities responsible for law enforcement. The main reason for this stipulation is that the AICs, as the administrative law enforcement authorities, have been fulfilling their responsibilities of preventing unfair competition and other illegal market transactions as well as maintaining the market order on the basis of relevant laws and regulations of the state. Meanwhile, the AICs have established a comparatively perfect market supervision system and possess rich experiences on market supervision.

2. The enforcement of the Law for Countering Unfair Competition

As the main enforcement authority on supervising unfair competition, the State Administration for Industry & Commerce and the local AICs have devoted
themselves in carrying out a great deal of effective work over these years. The AICs, which are at the three levels of province, city and county, are constructed by SAIC, an authority directly under the State Council at the central level. To enforce the Law for Countering Unfair Competition more successfully, the Fair Trade Bureau was established in SAIC in 1994. Afterwards, the local AICs have also established the corresponding law enforcement bodies in charge of the enforcement of the Law for Countering Unfair Competition under their jurisdiction. In order to improve SAIC’s authority and status, in March, 2001, the State Council decided to upgrade SAIC to the ministry level.

SAIC and local AICs have endeavored to prevent transaction of unfair competition and to investigate and deal with cases concerned. Since the Law for Unfair Competition came into effect in December 1993, the AICs in the whole country have dealt with about 130,000 cases concerning unfair competition. SAIC and the local AICs have also taken a series of measures to struggle against the administrative monopoly and enterprises with a monopolistic position abusing their power, which have rectified the market economic order and improved the economic environment.

II The review of the content and enforcement of the Law for Countering Unfair Competition

In the practice of law enforcement over these years, we can say that the implementation of the Law for Countering Unfair Competition has effectively controlled the transactions of unfair competition, fairly maintained the market order and significantly protected the right and interests of the operators and consumers. The market economy in China has developed in a healthy way and has become more and more prosperous while increasing at a high growth rate.

However, we have realized that there exists, to a certain extent, some weakness in the Law for Countering Unfair Competition or in our nation’s legal system of competition. First of all, there are some unfair competition transactions which can hardly be covered by the Law for Countering Unfair Competition. With the development of the market economy, different kinds of new unfair
competition, such as delimiting market, jointly limiting production, boycott, etc, are appearing. It remains to draft new stipulations on the agreements restricting competition between operators in the aspects of “sale areas”, “resale price maintenance”, “boycott”, “sale customers”, and so on. The second is the deficiency of the legal liabilities. The fact is that there are no administrative sanctions for transactions of predatory pricing (Article No.11), transactions of tie in sale and sale attaching unreasonable conditions (Article No.12), which makes the above-mentioned articles unable to be effectively used. The third is the weakness of the sanction, which can not meet the objective of punishing the illegal practice. For instance, the profit made from transaction of unfair prize-attached selling is much higher than the accrued administrative fine of 100,000RMB the highest. Also, it is without powerful supervision on the administrative and industrial monopolies. Effective regulations to regulate the restrictive practices and unfair competitive transactions of certain enterprises with a position of industrial monopoly abusing their power of natural monopoly or industrial monopoly are still in need. The fourth is the over-lapping of the regulations on unfair competition, which is spoiling the effect of the Law for Countering Unfair Competition. Some unfair competitions are beyond the regulations of the Law for Countering Unfair Competition as the result of other laws’ dismemberment. For example, unfair competition in field of telecommunication shall be supervised by telecommunication authority, according to the Regulations on Telecommunication promulgated in 2000. Because of the overlap of execution authorities, it is difficult to efficiently plan the supervision on unfair competition.

In view of the enforcement of the competition law, the local and departmental protection and administrative intervention are comparatively serious. For example, a municipal government made a decision that inspection by any authority shall be approved by the municipal government. No approval, no inspection. Some local governments have established “development zones” or “key protection markets”, which are not opened for on-the-spot inspection of the AICs. Some documents made by local government or industrial and commercial authorities violate the Law for countering Unfair Competition, and have been adapted as the basis of the restrictive practices by some public
enterprises. For example, Jiangsu local electrical enterprises forced the farmers to buy the electric meters and its boxes they supplied at the time of electricity network reform in rural areas. The law for Countering Unfair Competition says “public utility enterprises or other operators having monopolistic status shall not force others to buy the goods of the operators so as to exclude other operators from competing fairly.”(Article 6) When Jiangsu Administration for Industry and Commerce was engaged in investigating and prosecuting the case, the electrical enterprises quoted Provision 72 in the Business rules for Electricity Supply (the 8th order by the Ministry of the Electricity) as accordance, i.e. the purchase, installation, removal, replacement, verification, demolition, sealing up, sealing off and wiring of electricity meter and its accessories shall be handled by electricity supplier which the users shall cooperate with. According to this provision, the electricity meter, not specified as the monopoly product by the state, is described as a monopoly product, which has violated the Law for Countering Unfair Competition. Another example is that, according to the Insurance law of People’s Republic of China, except that there is expressly specified in laws or regulations promulgated by the State Council, whether to insure shall base on free will of one’s own, but the Regulations on Personal Mortgaged Loan promulgated by the People’s Bank of China stipulates that the debtor shall by himself/herself or entrust the creditor to procure insurance before signing personal mortgaged loan contract if the real estate taken as the collateral. Such provision has breached not only the free will principle laid down in the Insurance Law but also the fair competition principle established in the Law for Countering Unfair Competition. Based on this provision, the commercial banks force the debtor to procure insurance in a designated insurance company, even procure additional insurance, such as guaranty insurance, all risk insurance, etc.

To improve the enforcement of the Law for Countering Unfair Competition requires that: firstly, the local governments as well as the industrial and commercial authorities should change their functions and keep intervention to the minimum; secondly, to perfect the law enforcement authorities gradually and train the law enforcement officials which have provided an organizational safeguard for the enforcement of the Law for Countering Unfair Competition;
finally to promote the profound advocacy of the Law for Countering Unfair Competition, so as to strengthen the legal awareness of operators and consumers, and establish a sound social ground for maintaining fair competition.

To perfect the legal system of competition is the need for safeguarding and accelerating socialist market order, being of great importance. So, the government and the legislative bodies are taking effective measures including drafting Anti-monopoly Law to perfect the legal system of competition.

III. Further perfecting the legal system of competition by accelerating the procedure of anti-monopoly legislation

After the promulgation of the Law for Countering Unfair Competition in 1993, the Chinese government has prepared to draft the Antimonopoly Law. It was defined in the Legislative Program of the Standing Committee of the 8th National People’s Congress in early 1994 that the State Committee of Trade and Economy and the State Administration for Industry and Commerce were entrusted to draft jointly the Antimonopoly Law.

The leading group and working for drafting the Antimonopoly Law were established in May 1994. The drafting group has focused on collecting materials, investigating and researching afterwards. On this basis, the drafting of Antimonopoly law was taken into shape in July 1997.

Since 1998, the antimonopoly legislation in China has attracted more and more attention. In November 1998 and December 1999, the drafting group held jointly with OECD two international seminars on antimonopoly legislation successively in Beijing and Shanghai. On these two seminars, the domestic and foreign specialists, scholars and officials in the field of the Antimonopoly Law, carried out enthusiastic discussions around the topic of antimonopoly legislation in China. The drafting group has amended the draft of Antimonopoly Law according to the opinions and suggestions in the seminars. In June 2000, the drafting group finished the Text of Antimonopoly Law for Soliciting
Opinions based on another amendment and submitted it to the relevant authorities for criticisms. This year, further perfecting the draft of Antimonopoly Law and revising the Law for countering Unfair Competition have been listed as the 2th class legislation project by the State Council Office for the Legal Affair.

The drafting group has studied carefully on the feedback of each authority. Moreover, the group will carry on deeper research on the difficulties and focal points encountered in the legislation. (Such as the definition of relevant markets, the forms of abusing market dominant position, the standard and procedure of merger control, the regulations on administrative monopoly, the exception of the Antimonopoly Law, the extraterritorial effect of Antimonopoly Law and the relationship between the Antimonopoly Law and the Anti-unfair Competition Law)

We are endeavoring to promote the early issuance of the law of the people’s republic of china on antimonopoly law, so as to perfect the legal system of competition in china and ensure the health development on market economy.

In the past 20 years, for the purpose of the development of her own market economy, china has been trying hard to learn and workout its own competition laws and regulations, and put them into real application. We believe that our economy and consumers are benefited from these policies and practices, and we are going to make our laws and regulations more comprehensive and complete in conjunction with international norms.

I would like to express the sincere appreciation once again to the Thailand and other nations as well as international organizations for their concern and support to the perfection of the legal system of competition in China.

Thank you all for listening.