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## China's First Prosecution of an International Price-Fixing Cartel

2013-01-07

China's powerful National Development and Reform Commission (NDRC) (successor to the old State Planning Commission) on January 4 announced China's first prosecution of an international price-fixing cartel. The investigation targeted the South Korean and Taiwanese liquid crystal display (LCD) manufacturers that had already been successfully prosecuted in the United States, the EU and Korea. NDRC found that the members of the cartel sold more than five million LCD panels in China during 2001-2006, generating illegal proceeds of 208 million renminbi (\$33.4 million or €25.3 million). Participants were collectively ordered to repay injured Chinese TV manufacturers that purchased panels 172 million renminbi, had their remaining 36.75 million renminbi of illegal proceeds confiscated by the government, and were collectively ordered to pay fines of 144 million renminbi for a total of 352 million renminbi (\$56.5 million or €42.9 million). The participants also committed to stringently comply with Chinese laws, to protect the interests of competitors and consumers, to not discriminate against Chinese consumers, and to extend their product warranty period from 18 months to 36 months without charge.

The investigation is significant for several reasons. It is the first Chinese prosecution of an international price-fixing cartel, although NDRC had in recent years investigated Chinese domestic price-fixing and abusive pricing cases involving both foreign-invested and locally invested enterprises. Second, although NDRC is empowered under the Anti-Monopoly Law (2007) (AML) to investigate price-fixing cartels, it exercised its authority under the old Price Law (1997). It did so because the acts in question took place before the August 1, 2008 effective date of the AML, but NDRC also benefited from its established history of enforcing an older statute. Third, unlike the AML, the Price Law has no provision for leniency for cartel participants that voluntarily inform the government of an illegal cartel. The Price Law does, however, give the authorities discretion in assessing fines, with the amount ranging from one to five times the amount of the illegal proceeds. Thus, even under the Price Law, cartel participants have an incentive to inform and cooperate with NDRC, albeit less so than under the AML, which provides for whole or partial leniency for up to the first three informants.

Although this case was relatively straightforward, with NDRC piggybacking on investigations conducted in jurisdictions with more mature competition regimes and no Mainland Chinese cartel participants, it portends a more aggressive Chinese investigative posture in the future, which may

include information sharing with other jurisdictions. Firms should consider the merits of submitting leniency applications in China along with other jurisdictions upon discovering that they have participated in an international price-fixing cartel.

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