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CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES IN ACHIEVING GREATER ECONOMIC DEVELOPMENT THROUGH THE PROMOTION OF COMPETITION

Contribution from China

-- Session II --

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CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES IN ACHIEVING GREATER ECONOMIC DEVELOPMENT THROUGH THE PROMOTION OF COMPETITION

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1. The drafting of antitrust law of Peoples Republic of China has almost been finished and would soon be submitted to the State Council for reviewing before it goes to the legislature according to the legislative procedure in China. As I see it, big challenges to the enforcement of it would be expected if it becomes a law eventually, among which the following ones could be outstanding.

1. State intervening too much in markets

2. Antitrust law is supposed to be against private anticompetitive conduct and is not supposed to be applied to the markets that are controlled or regulated by government, as it is shown in economies in which an antitrust law has been introduced. Wherever government steps in, antitrust law would play little role in it, for the competition authority that is responsible to enforce antitrust law, as a part of the government, would barely be able to deny other government agencies' actions. Therefore the significance of antitrust law would be more identified in a free market economy than it was in a regulated or controlled economy.

3. China economy is regulated or controlled by government in many aspects although it has made a big jump toward free market economy in the past twenty years. By now, China economy is still called a government-guided-type one. That is to say, government remains powerful and active in various markets that should be free from intervening. Sometimes the government even gives direct orders to state-owned enterprises. For instances, the State Council restructured the petrol industry by combining state-owned oil enterprises into two groups of corporate in 1998. After the reshuffling, China National Petroleum Corporation (CNPC) monopolised the production of petrol in 12 provinces in northern China, as well as the downstream business like refining and retailing, while China Petroleum & Chemical Corporation (CPCC) 19 provinces in southern China. Lots of small-and-middle-sized private oil companies went out of the business because of the monopolisation of the two groups. In the same year, so-called "self-disciplined price" took place in industries like steel, chemical, farmer-using truck and building material. The price was actually done through the combining effort of large state-owned enterprises and trade unions and two government organisations which are identified as regulators of the industries above. The government organisations believed that destructive competition is carrying on in these industries and thus the government must step in.

4. Certainly the situation of market in China will be improved for the government is making great effort to keep itself from intervening on the market too much. However, it will have a long way to go. It would be naïve to expect that the government would withdraw completely and quickly from the areas that it used to occupy. Therefore, it would still be a big challenge for successful enforcement of the future's antitrust law in China.

2. The protection of local government for enterprises located in their jurisdiction

5. Local government in China inclines to block products that are competitive with the ones that are produced in its own jurisdiction from entering the market. This problem has been bothering China for a long time. The causes of it are various, among which, as I see it, Chinese tax system plays an important role because the revenue collected on products is shared to certain proportion by central government and local government. The more products sold by the local enterprises, the more benefit that received by local government.

6. China central government tried to solve the problem through various ways, including incorporating an article in China Countering Unfair Competition Law which was promulgated in 1993. The Law forbids local government and its agencies from blocking or set up obstacles against products that are not made by local enterprises. It entrusts the higher authority of the incumbent to correct any actions that run counter to the provision and give punishment to responsible officials.

7. The Law has not, however, been enforced effectively yet. The higher authority of the incumbent usually does not pay seriously attention to the violating actions, partly because that they have the same interest in it. It is hard for us to find a successful case that a higher authority performed actively to correct a violating action of a local government, say nothing of punishing responsible officials.

8. Therefore, considering the failure of Countering Unfair Competition Law, it is reasonable for us to expect that the actions of eliminating competition carried by local government would still be a big challenge to enforce antitrust law in the future. A competition authority would be hard to correct or punish the actions of local government.

3. Factors associated with human resources of the competition authority

9. From the experience of western countries, we learn that the competition authority must be neutral or non-political and professional so that the value of competition would be maintained or promoted. If the competition authority were influenced by politics too much, the goal of competition would be possible to be sacrificed to other values like employment or short-term economic booming. If the competition authority is not skilful enough to decide whether the business practices are really anticompetitive, the efficiency of the market could be hurt.

10. A totally neutral or independent competition authority is, however, hard to imagine in China because of the current political system. All officials or authorities, except the State Council, must accept the leadership or guidance from their higher authority, so does the competition authority. The higher authority of the competition authority would possibly put other values on top of competition value in some occasions. Therefore, when it has conflict with other values, the value of competition would possibly be given up. Thus the antitrust law would not be properly enforced sometimes.

11. Antitrust experts are also critical for a competition authority to properly enforce antitrust law for it has to do lots of balancing or economic analysis work when deciding a case. Therefore, the competition authority must have plenty of talents, both on economics and on laws. In China, however, these kinds of talents are not well provided. A few law schools in China just get started to offer antitrust course, but not an independent one. It is usually included in a general business law course. On the other hand, students who study economics usually do not have sound mathematical and statistics background. And what's more, economics students have rarely been hired in my agency since the organisation took place. Therefore we have lots of capacity building work to do for enforcing the antitrust law in the future, which would be another big challenge that we will face.