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Contribution from China

-- Session I --

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**THE REGULATION ON RESTRICTIVE COMPETITIVE BEHAVIOUR
BY PUBLIC ENTERPRISES**

--China--

By: SongYue¹

Intensifying supervision of public enterprises and guiding them to act in a law-abiding way is an important task for competition authorities of every country. Plenty of public enterprises such as water supply, electricity supply, gas supply, heat supply, postal service, telecoms, railways, civil aviation, urban transportation and cabled TV have direct bearing on people's life. These industries, most of which are regulatory ones and possess natural monopoly features, lack sufficient competition, thus easily resulting in high-price, low-quality products and services. These situations have caused dissatisfaction among consumers, gradually becoming a hot issue.

Chinese government attaches great importance on the supervision of public enterprises, encouraging them to compete efficiently. Recently we have made some progress in the reform of the monopoly industries by separating government functions and enterprises management, introducing competition into the industry, improving government's supervision and promoting enterprise restructuring, etc. For instance, in the past ten years we have been working hard on the reform in the telecommunication industry. Through the separation of enterprise management from the government, the whole industry restructured several times and we currently have three telecommunication companies. Each of them can carry out the local fixed-line phone business in each other's regions as well as provide mutual preferential service to each other, such as equal access. The competition is being shaped step by step, thus problems such as high price, low quality service have been solved to some extent. Besides, a lot of private investment is coming into industries like civil aviation and oil supply and consumers have more options other than public enterprises.

Meanwhile, through legislation Chinese government have been intensifying the supervision in this area. The Anti-Unfair Competition Law of 1993 has included specific regulations prohibiting restrictive competitive behaviours of public enterprises and other operators possessing an exclusive position in accordance with the Law. According to Article 6 of the Law, the public enterprises and other operators with an exclusive position in accordance with Law shall not force others to buy the goods of operators designated by them so as to exclude other operators from competing fairly. Besides, laws like "Price Law of China", "Telecommunications Regulations of China" have set strict regulations on restrictive competitive behaviour of public enterprises.

SAIC is the competent authority directly under the State Council, taking charge of market supervision and enforcing "Anti-Unfair Competition Law", supervising restrictive behaviour. According to statistics, Administrations for Industry and Commerce (AIC), from 1999 to the first half of 2008, almost 7000 cases of restrictive behaviour of public enterprises have been dealt with, covering a dozen industries such as water supply, electricity supply, insurance, telecoms, commercial banks, tobacco, oil, salt supply etc. Their restrictive behaviours include coercive transactions, coercive service supply, differentiated treatments, tie-in with unreasonable trading conditions, and abuse of the dominant position to collect unjustified fees.

In guiding public enterprises to follow fair competition principle, we work closely with industry institutions and give respective due role to full play to strengthen effective supervision in regulatory industries. We coordinate with the postal service, telecoms, railways and civil aviation industry

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institutions, particularly intensifying communication on the drafting of competition policy and industrial policy, and discuss how to prevent unfair competitive behaviour and restrictive behaviour in these special industries. We are working shoulder to shoulder and perform duties within respective jurisdictions in regulating and supervising public enterprises' behaviour to guarantee the legitimate rights and interests of consumers. It has been proved by practice that to supervise public enterprises, the coordination and cooperation between competition authorities and industrial institutions is of utter importance.

Since 1 August 2008, Chinese Antimonopoly Law (AML) has taken effect. SAIC is one of the main competition enforcement authorities, in accordance with law and the entrustment of the State Council. We take charge of Monopoly Agreement, Abuse of a Dominant Market Position, Abuse of Administrative Power to Eliminate or Restrict Competition (price monopoly behaviour excluded). Article 7 of the Law has clearly stated that business of monopolised industry shall act in a law-abiding, honest, credit-worthy and self-disciplined way, and shall subject themselves to public scrutiny. The public enterprises shall not abuse their dominant or exclusive position to harm consumers' interests. SAIC, as the main AML enforcement authority, will further supervise public enterprises in accordance with the Law, enhance consumers' welfare and construct a highly-efficient and orderly competition pattern.