

China's NDRC Targets Auto Industry

Over the past few weeks, China's National Development & Reform Commission, the agency responsible for investigating price-related violations of the Anti-Monopoly Law ("AML"), and its provincial bureaus (together, "NDRC") have announced fines against a number of companies in the auto parts and bearings industries. The auto parts and bearings fines follow a global investigation of price fixing and bid rigging and the announcement of fines for similar conduct in the United States, the EU, and Japan. NDRC also has pursued investigations of a number of auto makers for imposing restraints on the pricing of spare parts and maintenance and has pressured several auto manufacturers into announcing after-market sales and maintenance price cuts.

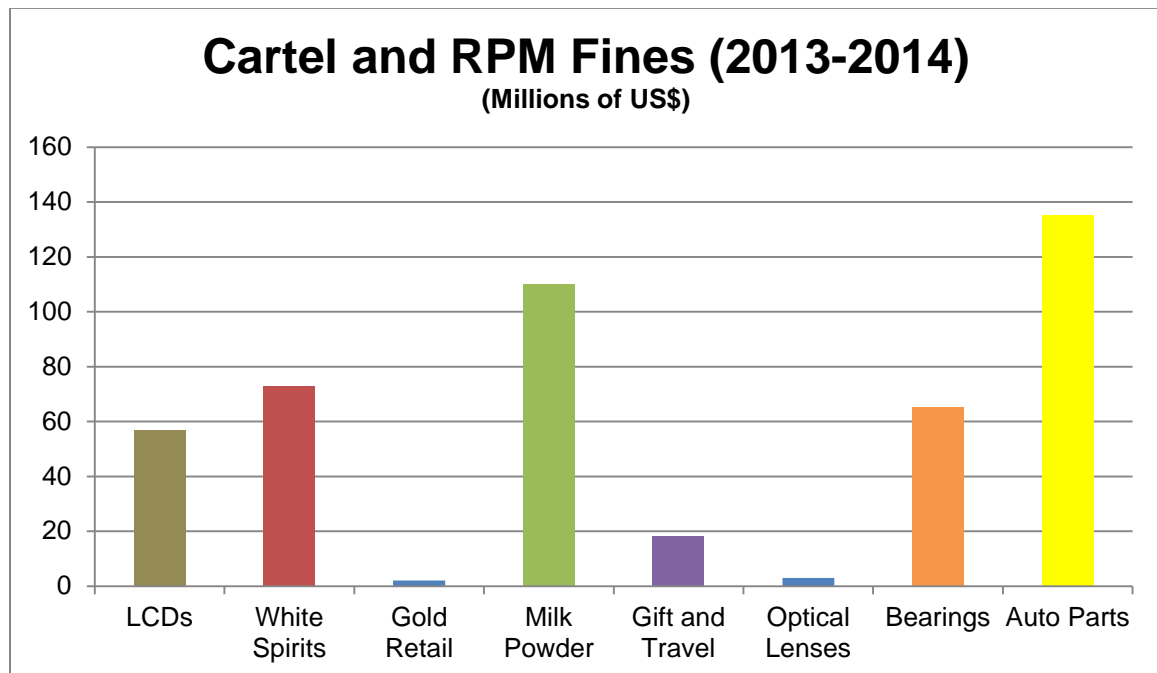
Auto Parts and Bearings Price Fixing Investigation

On August 20, NDRC announced total fines of RMB 1.24 billion (~\$200 million; €150 million) following an investigation of alleged price fixing and bid rigging. In its announcement, the NDRC said that since 2000, eight auto parts suppliers held frequent talks regarding sales and pricing in China. According to the NDRC, the collusion impacted the pricing of 13 auto parts, including wire harnesses, starters, alternators, and throttle controls, used in more than 20 car models produced by Toyota, Honda, Nissan, Suzuki, and Ford. NDRC also found that four bearings manufacturers colluded regarding prices for bearings sold in China.

The eight auto parts companies – Hitachi, Denso, Aisan, Mitsubishi Electric, Mitsuba, Yazaki, Furukawa, and Sumitomo – were collectively fined RMB 832 million (~\$135 million; €102 million). Hitachi was not fined as it was the first company to provide information to NDRC, and it provided further cooperation with NDRC pursuant to the agency's leniency program. The other companies received fines from 4-8% of relevant revenues in China in the previous year. The AML permits fines up to 10% of relevant China revenue in the previous year. Sumitomo received the largest penalty, RMB 290.4 million (~\$45 million; €35 million), which is the biggest antitrust fine levied in China to date. The previous record was the RMB 247 million (~\$40 million; €30 million) fine received by Kweichow Moutai in February 2013 for engaging in resale price maintenance of its white spirits. Moreover, the collective RMB 832 million fine levied on all of the auto parts suppliers is the largest industry-wide fine issued to date. The previous record was the RMB 669 million (~\$109 million; €82 million) fine assessed to milk powder producers for resale price maintenance. The relevant bearings manufacturers – Nachi-Fujikoshi, NSK, JTEKT, and NTN – were fined a total of RMB 403 million (~\$65 million; €50 million).

It is notable that for each investigation only the first company to report its behavior received immunity from fines. In prior investigations, such as NDRC's resale price maintenance investigation into the optical lens industry, multiple companies were exempted from fines. This may be the result of NDRC's view of the severity of this particular violation.

In addition, as reflected in the table below, NDRC is investigating more transactions and issuing large fines. Notably, many of the companies facing these investigations and significant fines are based outside of China (*i.e.* LCDs, milk powder, optical lenses, bearings, and auto parts) and the overall trend is towards increasing fine levels.



Vertical Restraints on Pricing of After-Market Auto Parts and Service

NDRC has been investigating possible anticompetitive practices in spare parts sales and distribution since late 2011. Since that time, there have been rumors of investigations of resale price maintenance by Mercedes-Benz and other luxury car makers and that these companies had changed their distribution contracts as a result.

This summer, the investigation of auto manufacturers' pricing practices has intensified. A number of manufacturers have announced price cuts for cars (Jaguar Land Rover, Chrysler) and/or spare parts (Audi, Mercedes-Benz, Chrysler, Toyota, Honda, BMW), likely as a result of pressure received from NDRC. In addition, investigations into the spare parts pricing and distribution practices of Mercedes-Benz (NDRC and its Jiangsu bureau announced that they raided several Mercedes-Benz facilities), Audi, BMW, and Chrysler have been confirmed. GM also announced that it was contacted by NDRC.

In the past few weeks, NDRC stated that it is nearing the conclusion of the investigations into Audi and Chrysler and that violations have been found and will be punished. On August 17, an official from NDRC's Jiangsu bureau confirmed that Mercedes-Benz had imposed vertical restraints on its dealers controlling the prices of auto parts and maintenance in the after-sales

market. It is expected that fines and perhaps behavioral commitments from the auto manufacturers will be handed down soon.

Conclusion

These investigations as well as the significant fines imposed in 2013 against LCD panel manufacturers (RMB 353 million), white spirits manufacturers (RMB 449 million), and infant formula producers (RMB 668 million) indicate NDRC's growing willingness and ability to pursue companies, both foreign and domestic, for pricing-related violations of China's AML.

Given the increased pace of antitrust enforcement in China, companies with operations in China are advised to put in place vigorous compliance measures, including training, compliance manuals, and senior executive oversight and engagement.

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If you have any questions, please feel free to contact any of your regular contacts at the firm. You may also contact our partners and counsel listed under [Antitrust and Competition](#) located in the "Practices" section of our website at <http://www.clearygottlieb.com>.

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