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State Sector Rules: Scope

- Article 7 calls for special supervision of
 - “industries that are controlled by the state-owned economy and that are critical to the wellbeing of the national economy and national security” and
 - “industries in which exclusive operation and exclusive sales are the norm of business in accordance with the law”
- No list has been published
- But “bootleg” NDRC draft ties scope to Price Law
- Double Bladed Sword-*and a dull one at that!*



State Sector Rules: Privilege?

- “the State shall protect the lawful business activities of the undertakings in such industries.”
- “the State shall regulate and supervise the business activities of such undertakings and regulate the prices of commodities and services provided by such undertakings”
 - “in accordance with the law”
 - “so as to protect the interests of the consumers” and
 - “to promote technological progress”



State Sector Rules: Duties?

- Such companies shall
- “conduct their business in accordance with the law,”
- “be honest and reputable in their business dealings,”
- “maintain strict self-discipline and accept public supervision”
- “not harm the interests of consumers by utilizing”
 - “their controlling positions or”
 - “their status as the exclusive provider of certain services or products.”



State Sector Rules

- Exemption?
- Enforcement Guidance?
- Grounds for SOE's to seek special treatment or invoke the "public interest" exceptions to the law
- Interaction between SOE and Private Actors



Administrative Monopoly

- Administrative Monopoly = anticompetitive misuse of official power
- Local Protectionism: AML prohibits discriminatory measures targeting products from other localities
- Agency Protectionism: AML prohibits “abusive” regulations that “eliminate or restrict competition”
- Largely redundant with existing measures
- **When is a regulatory measure an “abuse”?**
- Enforced by “superior” departments, not AML authorities → **Letting the wolves guard the sheep?**



AML Enforcement Structure

- State Council Appoints Antimonopoly Commission (AMC)
 - High-level policy coordination and planning
 - Research & issue policies and guidelines
 - Organize evaluations of domestic conditions of competition
 - Coordinate antimonopoly law enforcement efforts
- State Council Designates Enforcement Agencies
- Judiciary to hear challenges to specific agency actions and actions for damages



AML Enforcement Agencies

- Ministry of Commerce (MOFCOM)
 - Merger review under the AML
 - Monopolization in Foreign Trade (Foreign Trade Law)
- State Administration of Industry & Commerce (SAIC)
 - Monopoly Agreements (except pricing issues)
 - Abuse of Dominance (except pricing issues)
 - +Anti-Unfair Competition Law
- National Development & Reform Commission (NDRC)
 - Pricing-related monopoly agreements
 - Pricing-related abuse of dominance
 - + Price Law



AMC Leadership

- Chairman Wang Qishan (Vice Premier)
- Vice Chairmen
 - Zhang Ping (Chairman of **National Development and Reform Commission**)
 - Chen Deming (Minister of **Ministry of Commerce**)
 - Zhou Bohua (Director of State Administration for Industry and Commerce)
 - Bi Jingquan (Deputy Secretary-General of the State Council)



AMC Commissioners

- Zhang Mao (Vice Chairman of **NDRC**)
- Ou Xinqian (Vice Minister of Ministry of Industry and Information Technology),
- Yao Zhengke (Vice Minister of Ministry of Supervision),
- Zhang Shaochun (Vice Minister of Ministry of Finance),
- Gao Hongfeng (Vice Minister of Ministry of Transport),
- Ma Xiuhong (Vice Minister of Ministry of Commerce),
- Huang Shuhe (Vice Chairman of **State-owned Assets Supervision and Administration Commission**)
- Zhong Youping (Deputy Director of State Administration for Industry and Commerce),
- Zhang Qin (Deputy Director of State Intellectual Property Office),
- Zhang Qiong (Deputy Director of Legislative Affairs Office of the State Council),
- Cai Esheng (Vice Chairman of China Banking Regulatory Commission),
- Gui Minjie (Vice Chairman of China Securities Regulatory Commission),
- Wei Yingning (Vice Chairman of China Insurance Regulatory Commission)
- Wang Yumin (Vice Chairman of **State Electricity Regulatory Commission**).



China's Petroleum Industry

- Exploration/Production
 - CNPC/Petrochina, Sinopec, CNOOC
- Refining
 - Dominated by CNPC/Petrochina, Sinopec, CNOOC
 - Local & Private Refineries
 - Illegal “Teapots”
- Distribution/Retail
 - Vertically integrated SOEs
 - Some independent private retail

Direct
Regulation
&
Soft
Pressure
(MOFCOM+NDRC)

Retail Price
Set by NDRC



PRC Petroleum Industry Challenges

- Local Protectionism & Corruption
- Anomalous Affiliations
- Chronic Retail Shortages
- SOE Incentives →
- Refinery Expansion & Utilization
- 2006 Regs on foreign and private investment in wholesale & retail
 - Between retail price floor and upstream state-owned oligopoly?
- Oil Smuggling



AML Issues in Petroleum Sector

- Consumer Complaint to NDRC (Nov. 18 2008)
 - Challenge NDRC failure to adjust price after oil prices fell
 - Allege abuse of dominance by Petrochina & Sinopec by failing to initiate a price decrease by NDRC
 - Rely on Art. 17 prohibition of “unfair high prices” as abuse of dominance
- Consumer Court Claim (Dec. 3, 2008)
 - Consumer seeks refund of float margin on similar grounds
- Irony: Retail Prices Historically Lagged
- Competitor Claims?



PRC Electric Power Sector

- Generation
 - State Power Corp. (SPC) generation assets divided between 5 state-owned generation companies
 - Private and local genco's permitted
- Transmission/Distribution
 - 2 SOEs: State Power Grid Company & South China Power Grid Company
 - 7 Regional Networks: (North, Northeast, Northwest, North, East, Central, South, Guangdong)
 - 5 Provincial Networks (Shandong, Fujian, Xinjiang, Hainan, Tibet)
 - Some independent distributors
- Chief Regulators
 - NDRC → Tariff regulation
 - SERC (State Electric Regulatory Commission) → Created in 2003 with licensing and regulatory mandate



Electric Power Sector Challenges

- Regional Markets
 - Highly Fragmented Transmission/Distribution Grid
 - High Concentration within Regions
- Cost Structure
 - Predominantly Coal (77.7%), then Hydro (20.36%)
 - Interaction of largely flat costs and inelastic demand
- Barriers & Deterrents to Entry
- AML Issues?
 - Forced divestiture?
 - Future Retail Competition?



Thank you!
Any questions?

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