



**国家市场监督管理总局**

State Administration for Market Regulation

# Reflections on Excessive Pricing

State Administration for Market Regulation

Anti-Monopoly Bureau

Chen Qianting, Abuse Investigation Division

**18<sup>th</sup> EU-China Competition Week**

**2019.3.21**

# I. Excessive Pricing from the Perspective of the Anti-Monopoly Law

- **Is an enterprise entitled to set the price entirely on its own?**
  - Reasons for government intervention in pricing include: (1) public attributes of products; and  
(2) minimising the cost of negotiation and improving transaction efficiency
- **Is excessive pricing a manifestation of market dominance or an abuse of market dominance?**
  - Any kind of abuse of market dominance is in itself a manifestation of market dominance
  - Excessive pricing directly shows the "premium price" of products resulting from monopolies
- **Is excessive pricing purely exploitative or is it also exclusive at the same time?**
  - It is both exploitative and exclusive (price squeeze/price discrimination)



# I. Excessive Pricing from the Perspective of the Anti-Monopoly Law

Reasons for **Objecting** to the Excessive Pricing Regulation:

- It is able to attract newcomers and promote competition through monopoly profits
- It can mitigate the risks of innovation and R&D for enterprises and incentivise their innovation

Reasons for **Supporting** the Excessive Pricing Regulation:

- Hysteresis of the market to a certain extent
- Monopoly in the market is an inherent sign of market failure
- Excessive pricing exploits the downstream sectors and consumers, aggregates consumer welfare and damages the society
- The downstream sectors have to bear excessively high costs in the long term, which hinders their innovation and market access



# I. Excessive Pricing from the Perspective of the Anti-Monopoly Law

Relevant countries and regions generally hold a relatively moderate and cautious attitude towards the implementation of the excessive pricing regulation, and believe that: **Regulations that prohibit excessive pricing among undertakings with market dominance are merely applicable under extremely special circumstances:**

- There are major and persistent obstacles to access and expansion (the exact meaning of market dominance)
- Such obstacles cannot be removed (as they are also manifestations of market dominance, they are unlikely to be removed in the short term)
- Investment and innovation in the market are restricted (including the restriction and exclusion of market access to the downstream sector)



# I. Excessive Pricing from the Perspective of the Anti-Monopoly Law

## Four Common Methods to Determine Excessive Pricing:

- Costs and reasonable profits
- Comparison of similar products
- Comparison of the same product from the same enterprise at different locations
- Comparison of the same product from the same enterprise at different times



## II. Unfair Pricing in the Anti-Monopoly Law of China

### *Article 17 of the Anti-Monopoly Law:*

"Undertakings with market dominance shall be prohibited from engaging in the following abusive conduct of market dominance:

(I) Selling commodities at **unfairly high prices** or purchasing commodities at **unfairly low prices**;

.....”

Unfair Pricing vs. Excessive Pricing



## II. Unfair Pricing in the Anti-Monopoly Law of China

Paragraph 2 of Article 11 of the *Anti-price Monopoly Provision*

In determining "unfairly high prices" or "unfairly low prices", the following factors shall be considered:

- (I) Whether the selling prices or purchasing prices are considerably higher or lower than the prices at which other undertakings sell or purchase the same type of commodity;
- (II) Whether the selling prices are increased or purchasing prices are decreased beyond the normal range under the condition of basically stable costs;
- (III) Whether the price increase for selling commodities is significantly higher than the cost increase, or whether the price reduction for purchased commodities is significantly higher than the cost reduction for the transaction counterpart;
- (IV) Other relevant factors for consideration.



## II. Unfair Pricing in the Anti-Monopoly Law of China

*Provisions on Prohibiting Abuse of Market Dominance (Draft)*, Paragraph 2, Article 11

In determining "unfairly high prices" or "unfairly low prices", the following factors shall be considered:

- (I) Whether the selling prices or purchasing prices are **significantly** higher than or significantly lower than those of the same commodity or **comparable commodities** sold or purchased by other operators under **the same or similar market conditions**;
- (II) Whether the selling prices or purchasing prices are **significantly** higher or lower than those of the same operator selling or purchasing commodities in **other regions with the same or similar market conditions**;
- (III) Whether selling prices are increased or purchasing prices reduced beyond the normal range under the condition of basically stable costs;
- (IV) Whether the price increase for selling commodities is significantly higher than the cost increase, or whether the price reduction for purchased commodities is significantly higher than the cost reduction for the transaction counterpart;
- (V) Other relevant factors for consideration.



# III. Law Enforcement Practices Related to Unfair Pricing

## Isoniazid Case

"Isoniazid" is an antibacterial drug which is mainly used for the treatment of tuberculosis. In early 2017, the bulk price of isoniazid soared in a short period of time, resulting in a rapid rise in the downstream price of isoniazid tablets. The price of isoniazid tablets jumped from less than RMB 7 to RMB 28 per bottle, as reported by media. The increase in the bulk price of isoniazid also led to the contraction of downstream production and the shortage of isoniazid in some areas, which affected patients' medication.

In March 2017, the Anti-Monopoly Law Enforcement Agency in China launched an investigation into isoniazid manufacturing enterprises. The investigation showed that two major domestic bulk manufacturers of isoniazid had **increased their selling prices significantly beyond the normal range** under the condition that **the costs and the demand of downstream pharmaceutical companies were essentially stable**, and **no justification could be provided**.

In July 2017, the Anti-Monopoly Law Enforcement Agency in China imposed administrative penalties on Second Pharma Co., Ltd. and Tianjin Handewei Pharmaceutical Co., Ltd., which were found to have abused their market dominance by selling bulk isoniazid at unfairly high prices, and decided to impose a total fine of RMB 443,900 on the two companies.



### **III. Law Enforcement Practices Related to Unfair Pricing**

**The market for bulk pharmaceutical ingredients becomes an area with high occurrence of unfair high pricing**

2019 Chlorphenamine Case: highly similar to the isoniazid case

**Characteristics of unfair high pricing cases in the area of bulk pharmaceutical ingredients:**

- The upstream market is characterised by strict access, few operators and small scale, making it easily controllable.
- It is difficult for operators in the downstream sector to quickly change their sources of bulk pharmaceutical ingredients in a short period of time, making them heavily dependent on the upstream.
- Unfair high pricing is often accompanied by bundle sale and the refusal to trade.



# III. Law Enforcement Practices Related to Unfair Pricing

## Qualcomm Case

In November 2013, the Anti-Monopoly Law Enforcement Agency in China launched an investigation into Qualcomm. In February 2015, the same agency imposed a fine of 8% of Qualcomm's sales in 2013, totaling RMB 6.088 billion yuan, for abusing its market dominance.

Unfair pricing behaviors involved:

- **Unfairly high royalties for patent licensing**
  - Charging royalties for expired patents
  - Charging on the basis of the wholesale prices
- **Requiring free reverse licensing of patents**



# Thank You!

[chenqianting@samr.gov.cn](mailto:chenqianting@samr.gov.cn)

