



EU-China Trade Project (II)

中国-欧盟世贸项目(二期)



A project funded by the
EUROPEAN COMMISSION
欧盟资助项目

中国反垄断法下的法律责任

Legal Liability of Non-compliance with Anti-Monopoly
Law

黄 勇 教授 Prof. Huang Yong

对外经济贸易大学竞争法中心
Competition Law Centre, UIBE

Nov 28, 2011 Beijing

Support to China's Sustainable Trade and Investment System

支持中国可持续贸易和投资体系

提纲 Outline

1. 法律框架 Overall Framework
2. 没有刑事责任 No Criminal Liability
3. 行政处罚 Administrative Penalty
4. 民事责任 Civil Liability
5. 行政垄断的法律责任 Legal consequences for Administrative Monopoly

法律框架 Overall Framework

- 反垄断法第七章 法律责任 (46-54条) Chapter VII of AML: Legal Liability, Article 46-54
- 没有刑事责任 No criminal liability (for hard core cartels)
- 三大违法行为的两种责任后果 Two types of liability for three types of violations
 - 垄断协议, 滥用, 违法实施集中 Cartel, abuse and illegal concentration
 - 行政执法中的行政处罚与民事诉讼中的损害赔偿责任 Administrative measures under public enforcement and damages under private actions
- 独特的行政垄断及其独特的责任后果 The unique legal consequence for the unique ‘administrative monopoly’

没有刑事责任 No Criminal Liability

- 反垄断法中没有规定刑事责任，对于核心卡特尔亦然 No criminal liability, even for hard core cartels
- 在中国，仅有刑法典可以规定刑事责任 Under the current China legal system, only the Criminal Code could provide for criminal liability
 - 有关反垄断法项下的刑事责任仅能通过未来刑法典的修订进行 The criminal liability for AML violations could only be adopted through the future revising of the Criminal Code
- 区分第七章中的实体责任与程序责任（第52条及54条） Recognize the difference between the ‘substantive liability’ and ‘procedural liability’ (Article 52 & 54)
 - 第52条及第54条提及的执法程序中的刑事责任 The criminal liability in public enforcement as mentioned in Article 52&54

行政处罚 Administrative Penalty

- 四种形式 Four forms:
 - I. 责令停止违法行为 Cease-and-desist order
 - II. 没收违法所得 Confiscation of illegal gains
 - III. 处以罚款 Imposition of fines (1-10% or RMB500,000)
 - IV. 撤销行业协会的登记 Revocation of the registration of trade associations
 - V. 责令恢复原状 Order to restore the status quo ante
- 不同适用 For violations of:
 - 卡特尔 Cartel: I, II, III & IV
 - 滥用 Abuse: I, II & III
 - 违法实施集中 Illegal concentration: III & V

行政处罚 Administrative Penalty

- 没收违法所得 Confiscation of illegal gains
 - 如何界定违法所得 What is ‘illegal gain’?
- 罚款的确定 How to define the amount of fines?
 - 营业额的确定 The “turnover” test
 - 1-10%的自由裁量 Discretion between 1% to 10%
- 卡特尔宽大制度 Leniency for cartels:
 - 国家发改委相关规定 NDRC Rules
 - 国家工商总局相关规定 SAIC Rules
- 违法实施集中的法律责任 Consequences for illegal concentrations
 - 责令恢复原状 Order to restore the status quo ante
 - 罚款50万人民币 Fine of RMB 500,000

民事责任 Civil Liability

- 第50条的概括性规定 The general principle of Article 50
- 最高人民法院的司法解释 The draft Judicial Interpretation by the SPC
 - 原告资格 The standing of plaintiff
 - 管辖权 Jurisdiction
 - 举证责任 Burden of proof
 - 损害赔偿的确定 Determination of 'damages'
 - 行政执法与民事责任的关系 Relations between public enforcement and civil liability

行政垄断的法律责任 Legal Consequence for administrative monopoly

- 反垄断法对于行政垄断的独特规定 The unique ‘administrative monopoly’ as provided in Chapter V of the AML
- 处罚建议权与处罚实施权的分离 Only the ‘superior authority’, rather than the enforcement authority who can only propose the penalty, holds the power to impose penalty
- 两种责任形式 Two kinds of penalties
 - 责令改正 Order to correct the violations
 - 行政责任 Administrative sanctions

谢谢大家

Thank you

- 探讨、交流时间 Any questions or comments?
- 联系方式 Contact:
huangyong1962@vip.sina.com