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Anti-monopoly law in the compulsory licensing of intellectual property¹

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As an incentive to innovation, intellectual property (IP) should be protected by law. However, as it is a key factor in market competition, it should also be subject to competition law. In most jurisdictions, restriction of competition related to IP rights is not a black and white question, and such rights are challenged only when the IP owners hold market power and when protection of their rights has a serious and unreasonable effect on competition. In assessing IP-related restriction of competition, we need to analyze several elements: we have to define the relevant markets, identify the parties concerned, determine their market share, assess the anti-competitive effects of the controls, etc.. China's existing legislation is not adequate to solve problems arising from IP-related restriction of competition. Nevertheless, the process of China's legislation on this issue shows clearly that the misuse of IP rights for the purpose of excluding or significantly restricting competition is not justifiable under competition law.

Keyword: intellectual property, Licensing of Intellectual Property, restraint of competition, anti-monopoly law, compulsory licensing

As everyone knows, anti-monopoly law is aimed at encouraging competition and preventing monopolies, while intellectual property (IP) law is aimed at encouraging people to gain a market advantage through invention and innovation. Due to the fact that IP has in fact become a strategic lever in corporate competition, firms with no competitors or no real competition in the technology market, such as Microsoft, can easily dominate or even monopolize the market. This has led to IP law being regarded by some as contributing to monopoly, or even being in opposition to anti-monopoly law. What is the relationship between the two bodies of law? Do they have any common points? And if so, what are they? Are they in conflict, and if they are,

1 This article forms part of the 2006 national major project of the Ministry of Justice on the rule of law and judicial theory, "Market Economy and Anti-monopoly Law: From the Perspective of Intellectual Property" (06SFB 1015).

how can this conflict be solved? Now that we live in an information society, IP is gaining ever greater importance in market competition, and IP protection vs. anti-monopoly law is emerging as a major topic in legal studies. Anti-monopoly law has to be taken into account in many issues involving IP, such as how IP rights are acquired, claimed, licensed or denied. In this article, the relationship between intellectual property and anti-monopoly law will be discussed in the light of a German Federal Supreme Court ruling involving technical standards and the compulsory licensing of IP.

I. German supreme court ruling concerning Standard Tight-Head Drum

The 2004 German Federal Supreme Court (*Bundesgerichtshof*) ruling was mainly concerned with a de facto standard in Germany's chemical industry. The lawsuit had its origin in the common initiative of a few large German chemical firms to research and develop a synthetic tight-head drum from which residual liquids could easily be emptied. Four of the firms subsequently endeavored to develop such a product and the legally protected proprietary technology one of them came up with was chosen as the standard for such drums. Because this became the industry standard, and similar products manufactured by other firms did not meet this standard, there was no market for them. In accordance with an agreement between the firm whose product had become the standard and the other three firms, the former was obliged to license its proprietary technology to the other three free of charge. Firms other than these three would have to pay a licensing fee to the original right holder if they were to produce the patented product. The defendant in the lawsuit, X, was another synthetic drum maker, who had used the patented technology to produce and sell this product after his request for a license was denied. The patent holder then sued him and asked the court to award damages. The defendant, for his part, counter-sued the patent holder for violation of the German Law against Restraints of Competition (German Cartel Law) and asked the court to compel the plaintiff to grant him use of the patented industry-standard technology free of charge. The case ended up in the Federal Supreme Court.²

It is evident that the crux of the matter lay in whether the court could compel the plaintiff to allow the use of his patent by the defendant. If the answer was in the affirmative, the defendant would win the lawsuit; if not, he could be deemed to have infringed the IP rights of the right holder. Although the EU had issued a series of rulings on compulsory licensing, such as the final ruling on the 1996 Magill case, some German scholars and entrepreneurs, including the plaintiff in the suit in question, were firmly of the view that since German patent law explicitly laid down circumstances in which compulsory licensing was warranted, the Law against Restraints of Competition should not in principle apply to this case, that is, restraint of competition could not be invoked to compel the right holder to license the use of his patent by others. Such a view, however, was deemed incorrect by the German Supreme Court, on the grounds that the goals

2 BGH,Urt. v. 13.7.2004 – KZR 40/02, GRUR 2004, 966 – Spundfass.

of IP law and competition law were not identical, and the former should not in principle hinder the application of the latter, that is, IP rights did not constitute an obstacle to the imposition of compulsory licensing based on competition law. The outcome of the case was the Supreme Court's opinion, based on Art. 20 (1) of German Law against Restraints of Competition,³ that since the patent in question was the industry standard, the right holder was obliged to license the use of his patent by competitors. We can see from the Federal Supreme Court's decision two basic preconditions for compulsory licensing of IP:

First, such a license be an indispensable condition for market access.

In the Standard Tight-Head Drum case, the Court pointed out at the outset that the IP as exclusive right usually enhances competition. Therefore, competition law applies to it only "under exceptional circumstances." The Court did not specify what was meant by "exceptional circumstances," but explained the general conditions under which IP rights would impair free competition and thus competition law might apply. In this specific case, the patent in question had become a *de facto* trade standard for tight-head drums in the chemical industry. This meant that if any firm wanted to manufacture this kind of drum, there was no substitute for the patented technology. In such circumstances, the patent itself represented a technology market (referred to in this case as an upstream market), one that was one hundred percent in the possession of the right holder, who enjoyed market dominance. Because there was no substitute for the patented technology in manufacturing this item, obtaining a license for the use of this technology was a necessary condition for other firms to gain access to the market (the downstream market, as it was referred to in this case).

Second, the monopoly holder's refusal to grant a license lack strong justification.

Seen from the perspective of competition law, the state's purpose in granting IP rights is to foster innovation and wider dissemination of technology. In other words, the aim is to prevent competition by imitation in technology and products but promote competition by substitution. Since, in this case, the refusal of the patent holder to grant a license was detrimental to competition by substitution between competing firms and to their innovation activities, it was thus unreasonable and unjust.

The Court pointed out that even firms with market dominance have the right to refuse a license to some firms while granting it to others, but this right should be limited, that is, the refusal to grant the license should be objectively fair. As the Court was conducting a legal rather than a factual investigation, its decision stopped short of specifying whether the right holder's refusal to license was objectively fair. But it stressed that since patent law is aimed at enhancing competition and innovation, in this case, where discriminatory treatment was involved, the right holder's refusal to license would have to meet a very high standard of fairness.

³ According to Art. 20 (1) of the 2005 seventh revised version of the German Law against Restraints of Competition, a firm with market dominance may not directly or indirectly hinder, through unfair means, another firm from taking part in business activities that other similar firms can take part in, nor may directly or indirectly treat another firm differently from other similar firms without objective justification.

II. An analytical commentary on the Standard Tight-Head Drum case

The German Federal Supreme Court's ruling on the Standard Tight-Head Drum case is a classic example of recent international litigation over the compulsory licensing of IP rights. In particular, it is a classic case of issues relating to technical standards. According to this ruling, in judging whether the refusal of a license for IP use constitutes abuse of IP rights, at least two parameters should be borne in mind. The first is whether the IP right in question is a key condition for entry to the downstream market; the second, whether the right holder's economic motivation in refusing to license the IP is fair. In this specific case, the Court decided that the right holder had failed to observe the German Law against Restraints of Competition, Art. 20 (1), that is, he had engaged in discriminatory behavior, giving differential treatment to firms engaged in the same business and thereby placing some of them at a serious disadvantage in market competition. Furthermore, even if the right holder had not engaged in discriminatory behavior, that is, even if he had refused to grant a license to the defendant without having granted one to any other firm, the Court should still make the granting of the license compulsory. This is because once a given technology becomes the industry standard, it should be open to all firms in that industry as is the case with standards set by standardization agencies; otherwise such a standard, far from enhancing competition, would end up precluding, hindering and impairing it. The Standard Tight-Head Drum ruling, rich in content and far-reaching in significance, not only points out preconditions for compulsory licensing of IP rights, but also stimulates our thinking with regard to competition policy issues involving IP. Among the ideas it suggests are at least the following:

1. The exercise of IP rights should be constrained by competition law

The two legal systems aimed at encouraging innovation and competition, IP law and competition law have complementary functions, but differ in important ways. Broadly speaking, IP law is based on the economic value inherent in intellectual property and serves mainly to grant property rights to the right holder, protect these rights, and balance the relationship between the right holder and the licensee. Anti-monopoly law, for its part, serves as a means of preserving market competition. In terms of IP, it serves mainly to regulate the exercise of IP rights. As pointed out in the ruling on the Standard Tight-Head Drum case, given that IP law and competition law do not have identical goals, IP rights cannot in principle hinder the application of competition law, nor can they hinder compulsory licensing based on competition law.

Some may argue that anti-monopoly law should look kindly on those market forces that originate in IP, so as not to weaken the creative drive of the firms concerned and reduce the benefits that flow to society from IP. For this reason, some people felt that the EU decision imposing a substantial fine on Microsoft raised a big question to the corporate and academic circles worldwide and left them in a dilemma: should we encourage innovation, or protect competition? In fact, such a question is wrong, as there is no essential difference between the two. Nor is there any essential conflict between IP protection and anti-monopoly law; it is just that acquiring IP rights cannot guarantee that the right holder will not be subject to charges based on anti-monopoly law. This means that when it comes to opposing monopoly, no firm

may enjoy special treatment by virtue of its IP rights. During the case brought against it by the U.S. Department of Justice, Microsoft tried to justify its behavior by claiming that its copyright should be protected by exemptions established in antitrust law. However, this claim was refuted by a circuit judge, who pointed out that copyright owners can no more be exempt from antitrust liability than the owner of a baseball bat can be exempt from tort liability.⁴

In principle, anti-monopoly law in all countries treats intellectual property in the same way it does other kinds of property. Ordinary property cannot remain immune to the constraints of anti-monopoly law on account of its exclusive or monopolistic character, and neither can intellectual property. Today, people are particularly concerned with restraint of competition in the realm of intellectual property, as firms with market dominance may find it extremely easy to use their IP rights and especially their network effects to bring the whole of the upstream or downstream part of their market under their sway, thus suffocating market competition over an excessively vast area and unfairly damaging the innovative activities of other firms. Therefore, imposing compulsory licensing of IP rights, including those of Microsoft, in accordance with anti-monopoly law, far from restraining innovation and development in Microsoft and similar firms, is aimed at providing all competitors with a platform and environment enabling them to participate in competition.

In fact, the peculiar features of IP have already been adequately taken into account in IP law. For instance, geographical restrictions within the scope of a patent are usually regarded as an inherent right of the patent holder, as such restrictions help the right holder allocate resources among licensees in a rational and appropriate manner. This provides an incentive for the latter to assume the investment risk, thus promoting competition. Anti-monopoly law all over the world is generally unlikely to regard such restraints as illegal. In such circumstances, the right holder should not be entitled to further extraordinary protection in competition law, as this would make it impossible to preserve market competition order. In short, if IP right holders make use of their rights not only to protect their own inventions or creations but also as a tactic to impede fair competition, such actions should be regarded as abuse of their IP rights and a violation of anti-monopoly law. To sum up: in practice, it is quite exceptional for a right holder to be forced to grant a license on the grounds of violating anti-monopoly law; the Microsoft and Standard Tight-Head Drum cases were two such exceptional cases.

2. Resolving the conflict between IP and competition policy: weighing the impact of restraints on competition

The essential feature of IP is exclusivity, in the sense that nobody can make use of a right holder's IP rights without his consent; hence its role as an incentive mechanism in encouraging innovative competition between firms, leading ultimately to improvements in consumers' welfare. However, this exclusivity, far from being absolute, is given a protection with limited duration enforced in limited ways. For example, all countries set a time limit on patents. Once it expires, everybody is entitled to the use of the invention or technology. This means that

4 Lawrence A. Sullivan, and Warren S. Grimes, *The law of antitrust: an integrated handbook*. p. 899.

protection of IP is in fact the result of the state's balancing the long-term economic benefits of IP against the short-term effects of restraints on competition.⁵

Given that the goal of IP is to encourage and enhance innovation, the question of whether its competition-restricting effects are exempt from anti-monopoly law depends on whether these restraints facilitate the enhancement and promotion of innovation. In the Standard Tight-Head Drum case, the German court pointed out that one of the prerequisites for compulsory IP licensing was the lack of substantial justification in the right holder's refusal to license. As stressed in the court's decision, patent law is meant to promote competition, whereas in the case in question the discriminatory behavior of the right holder did not serve to promote competition, and therefore lacked substantial justification. What was actually happening in the Standard Tight-Head Drum case was that the right holder was making use of his IP rights as a means of blocking market access. When a certain IP right has become the industry standard and no other firm can gain access to the market without a license, refusal to license will have a long-term impact on market competition. Consequently, competition law applies here.

From the 1990s onward, with the constant evolution of IP law and anti-monopoly law in judicial practice, people no longer see the question of restraints on competition in the IP area in black-and-white terms. This means that such restraints are no longer viewed either as altogether illegal in themselves or as wholly entitled to exemption from anti-monopoly law. The viewpoint now prevailing is that although patents, trademarks, copyright and trade secrets are in themselves exclusive by nature, entailing certain restraints on their production, use and sale to the exclusion of others, they do not necessarily imply market dominance or monopoly. In fact, except for a few cases such as Microsoft's computer operating system and the Standard Tight-Head Drum, the vast majority of IP rights are subject to market competition and under considerable pressure from competitors. Therefore, in the question of IP-related anti-monopoly law, market dynamics are a decisive factor. The exercise of IP rights only comes under the constraints of anti-monopoly law when it has in fact become a factor and market force that hinders competition.

III. Implications of the Standard Tight-Head Drum case for China

The ruling of the Federal Supreme Court was possible thanks to German Law against Restraints of Competition. A similar ruling would have been possible in the United States should such a case have occurred there, for in accordance with Sec. 2 of the Sherman Act, attempted monopolization is against the law. Moreover, American courts have a rich record of case law in this area. However, should a case like that of Standard Tight-Head Drum occur in China, Chinese courts and other enforcement agencies would have difficulty handling it from the perspective of anti-monopoly law, for China still has no systematic law against monopoly and what anti-monopoly legislation there is in relation to IP is far from perfect. On 24 January 2003, the American company Cisco Systems Inc filed a lawsuit against China's Huawei Technologies

5 Jay Dratler, *Licensing of intellectual property*. pp. 502-503.

and its US subsidiaries, alleging that they had infringed on its IP rights. In fact, the case of Cisco vs. Huawei was quite similar to the German Standard Tight-Head Drum case. Cisco had a nearly complete monopoly of the relevant market thanks to its software project source code and technology files and about 80 percent of the router market, so that its IP (a software source code), a de facto industry standard, served to block its competitors' market access. The case has triggered expectations and concerns about China's anti-monopoly legislation among Chinese academics and entrepreneurs. As more and more transnational software firms like Cisco enter the Chinese market, Chinese firms will find it particularly necessary to have an anti-monopoly law to protect their right to fair participation in market competition, as foreign firms already dominate the global software market. It can be said that both the Cisco case in the US and the Standard Tight-Head Drum case in Germany present a challenge to the current Chinese legal system.

1. Current law in China involving IP's restrictive impact on competition

China's current regulations involving the restrictive impact of IP on competition appear mainly in the 1999 Contract Law, where Article 329 reads: "A technology contract that illegally monopolizes a technology, impedes technological progress, or infringes upon the technological achievement of others shall be null and void." In view of the vagueness of this provision, on 16 December 2004 the Supreme People's Court issued a judicial document entitled "Interpretation of the Supreme People's Court concerning Some Issues on the Application of Law for the Trial of Cases on Disputes over Technology Contracts." This specifies that "illegally monopolizing a technology and impeding technological progress" refers to the following six circumstances:

- (1) When the contract restrains one of the parties from embarking on further research and development on the basis of the technology specified in the contract or from use of the improved technology, or when the conditions under which both parties are to exchange the improved technology are unequal. This includes cases in which one of the parties is required to grant the other party free access to the improved technology it has developed; cases in which transfer of such technology to the other party takes place on a basis other than mutual benefit; or cases in which the intellectual property resulting from the improved technology in question is monopolized or enjoyed without payment.
- (2) When one of the parties is restrained from obtaining from other sources technologies similar to, or competing with, those provided by the licensor.
- (3) When one of the parties is prevented from putting to full and reasonable use the technology specified in the contract, including when the licensee is restrained in an obviously unreasonable way from manufacturing products or providing service by exploitation of technology specified in the contract in terms of quantity, variety, pricing, marketing avenues or export market.
- (4) When the licensee is required to accept additional conditions unnecessary for the exploitation of the technology in question, including the purchase of unnecessary technologies, raw materials, products, equipment or services and the taking on of unnecessary staff.
- (5) When licensee's avenues or sources for the purchase of raw materials, parts, products or equipment are unreasonably restrained.

- (6) When the licensee is prohibited from expressing challenging the validity of the technology IP specified in the contract or when additional conditions are set for such a challenge.

The State Council's 2002 Management Regulations on Technology Import-Export and the 2004 revised version of the Foreign Trade Law contain provisions dealing with the restrictive effects of intellectual property on competition. According to Article 30 of the Foreign Trade Law, the authorities responsible for foreign trade under the State Council may take the necessary steps to eliminate the damage arising when an IP rights holder commits any of the following acts: preventing the licensee from challenging the validity of the IP rights specified in the licensing contract, compulsorily packaging the license, or incorporating exclusive grant-back conditions in the licensing contracts, and thereby damages harming the fair competition order in foreign trade.

2. Current Chinese law: analysis and commentary

The very fact that Chinese lawmakers have imposed various controls on restraints of competition in the field of IP shows that China takes this issue seriously. However, the following inadequacies make it difficult for current IP-related Chinese anti-monopoly law to solve this problem.

- (1) Absence of basic concepts such as relevant markets and market dominance.

In resolving any legal case involving restraints on competition, the first step should be to evaluate the relevant market. In its ruling on the Standard Tight-Head Drum case, the German Federal Supreme Court started from this point, pointing out that the right holder's patent in itself constituted an upstream market, while the drums manufactured on the basis of this patent constituted a downstream market. Unless the relevant markets are correctly identified, it is impossible to ascertain the market position occupied by the respective litigants and consequently impossible to determine whether the IP-related restraints on competition are rational or not. In today's world, anti-monopoly law in all countries treats IP rights on an equal footing with other kinds of property. In other words, when effective competition exists for a certain technology or IP product, the right holder generally enjoys ample contractual freedom. By contrast, the holder of a certain technology or IP product that is regarded as a monopoly is often a firm that has market dominance, as was the case with the patent holder in the Standard Tight-Head Drum litigation. In such cases, the right holder's contractual freedom is strongly restrained. Now, without a basic anti-monopoly law and without basic regulations to identify the relevant markets and market dominance, it is hard to analyse and identify restraints on competition in the field of IP.

- (2) Lack of comprehensive criteria for IP restraints on competition.

It is true that, in its "Interpretation of the Supreme People's Court concerning Some Issues on the Application of Law for the Trial of Cases on Disputes over Technology Contracts," the Supreme People's Court indicates a series of possible restrictive clauses in IP licenses, including restrictions on quantity, on the fields in which the technology can be utilized, on pricing and on sales channels, as well as unreasonable grant-backs, non-competition clauses, unreasonable packaging of different items and no-challenge clauses. However, the list is far from complete. For instance, nothing is laid down concerning problems such as the patent pooling and cross

licensing so evident in China's DVD industry. Article 30 of the Chinese Foreign Trade Law just refers to the TRIPs agreement in indicating three kinds of IP-related restraint of competition. This way of going about things is quite inappropriate for state legislation on IP-related restraint of competition, as it says nothing about restrictions on price, quantity or geographic region, which are regarded in many cases as the core issues for the existence of a cartel.

Another point is that even though current Chinese law has provisions on IP restraint of competition, such as those on no-challenge clauses, compulsory packaging and exclusive grant-back listed in the Foreign Trade Law, these provisions fail to specify how the problem of restraint of competition in the IP field should be analysed. In fact, in today's world most countries have a positive evaluation of IP rights and their transfer, and the principle of reasonableness is generally applied to IP restraints of competition, including geographic restrictions. This is because, in the IP field, although geographical restrictions limit competition among licensees and between the licensor and the licensee, they help protect the licensee from "free riders" among the other licensees or the licensor. This constitutes an incentive for the licensee to invest within the geographic area covered by the license, thus enhancing the economic value of the licensed technology and, at the same time, raising the prospective returns for the licensor and enhancing his incentive to license. This means that when evaluating the applicability of provisions concerning IP restraint of competition, the question of whether the restriction benefits competition and innovation should be borne in mind.

Another problem is that while it is mainly the licensor who is responsible for abuses in issues involving IP licensing, in cases where the licensee is a firm with market dominance, it may impose unreasonable restrictions on the licensor, such as excessive geographical restrictions that prevent the licensor from granting licenses to other firms even after the expiry of the license contract, so that the technology in question cannot be utilized within the boundaries of the contractual area. Such restraints are regarded as "black clauses" in the 1996 EU Technology Transfer Block Exemption Regulation (TTBER). In current Chinese legislation, the licensor's interests appear to be insufficiently taken into account. For instance, in China's Foreign Trade Law, the no-challenge clause is viewed as illegal in itself, while in fact the legitimacy of this clause has always been a controversial issue. From the perspective of competition law, if a firm has gained a market advantage through an IP right that is actually invalid, this invalid IP right will certainly be incompatible with the public interest. In such cases, the no-challenge clause is obviously unreasonable and unjustified, and the licensee should be legally permitted to challenge the validity of the IP right in question. Nevertheless, the no-challenge clause may sometimes be unjustifiable from the viewpoint of the IP right holder, for even where the IP right is protected by law, such a clause may entail some risk for the licensor, in that the licensee may use the threat of a challenge to the validity of the IP right as a means of demanding a lower license fee. Even if the licensor wins the case, the unnecessary litigation may cause considerable distress. With this in view, the EU's Commission Regulation (EC) No. 772/2004 of 27 April 2004 on Application of Article 81(3) of the Treaty to Categories of Technology Transfer Agreements (772/2004/EC) establishes that if a license agreement directly or indirectly puts the licensee under an obligation

not to challenge the validity of the licensor's IP right, this restriction will not be exempt under these regulations. However, if the agreement stipulates that in cases where the validity of the licensor's IP right is challenged by the licensee, the licensor has the right to terminate the license agreement, the restriction can be exempt. This shows that in evaluating IP-related restraint of competition, the interests of both the licensee and the licensor should be taken into account, and the interests of the two should be balanced to the extent possible.

In fact, aside from the above-mentioned no-challenge clause, other aspects of IP-related restraint on competition should also be submitted to economic analysis. Current trends in legislation in various countries indicate that in analyzing this issue, anti-monopoly enforcement agencies should not just identify the relevant markets and determine the market situation of each of the parties involved, but should also consider whether they are in competition. If they are competitors, their mutual restraints on competition may have quite a negative effect on the market. Furthermore, since IP licensing usually has the effect of enhancing welfare and promoting competition, anti-monopoly enforcement agencies in various countries usually adhere to the principle of justification when dealing with the restrictive impact of IP rights on competition, except for isolated cases such as price fixing, output restriction, market partitioning between competitors, collective boycotts in certain circumstances and resale price maintenance.

3. Prospects for improvement in China's IP-related anti-monopoly laws

With the drafting and promulgation of China's anti-monopoly law, IP-related anti-monopoly legislation is bound to be put on the agenda of Chinese lawmakers. Article 54 of the Draft Anti-Monopoly Law, submitted to the National People's Congress by the State Council in 2006, reads: "Where the operators exercise the intellectual property rights pursuant to the laws and administrative regulations relating to intellectual property, this law is not applicable. However if the operators abuse their intellectual property rights to eliminate or restrict competition, the law will apply." Some believe that this provision exempts intellectual property from the anti-monopoly law. I think, however, that what this provision means is precisely that intellectual property doesn't always enjoy exemption from the anti-monopoly law, especially when the operator in question abuses his intellectual property rights to eliminate or restrict competition.

It should be pointed out that when it comes to the anti-monopoly issue, IP, though treated on an equal footing with other kinds of property, is markedly more susceptible to sharing and infringement. In order to provide enforcement agencies with guidelines, ensure legal stability and allow the parties to predict the legal consequences of their acts, the State should lay down specific provisions concerning restraint of competition in IP licensing, like the EU's Commission Regulation (EC) No. 772/2004 of 27 April 2004 on Application of Article 81(3) of the Treaty to Categories of Technology Transfer Agreements (772/2004/EC). The legal system in this respect should include a basic evaluation of restraint of competition in IP licensing, an analysis of the basic ways in which these restraints can occur, a definite stipulation on whether frequent occurring restrictive clauses fall under the principle of reasonableness or are in themselves against the law and, where the restraints of competition are consistent with the principle of reasonableness, an analysis of degree to which they could harm competition. Indeed, Chinese

lawmakers are now embarking on the task of working out such a legal system.

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