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# THAILAND

## Newsletter

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## Carmakers' Signed and Retracted Price War Ceasefire in Shanghai and Potential Effects in Thailand

One of the common *raison d'être* of anti-trust regulations around the world is to prohibit arrangement between competitors. The most obvious, straight-forward, and effective arrangement is on prices. Arrangement on prices, whether direct fixing, range fixing, increment fixing, or any other types of indirect fixing, will have predictable impact on the market and consumers, including stagnation of prices, reduction of competition, commercial and corporate complacency, all of which lead to reduction in research and development and service development. The Thai Trade Competition Act of 2017 addresses this issue in a very direct and harsh manner, with a possibility of a financially destructive fine and even imprisonment of up to two years for those who have joined a cartel. The law does not care if the domestic cartel is pursuant to an order of the offshore parents or the Thai subsidiaries' own volition.

The most interesting anti-trust news during the past week came out of the Shanghai Auto Forum, when 15 Chinese, and one foreign, electric vehicle brands, including all the big names on the global stage, signed a pledge that effectively includes a ceasefire of the ongoing price war in the industry. Of the four principles signed on by the brands, one stood out from an anti-trust perspective, and is presumably the main reason behind this signing – "to maintain fair competition and not disrupt fair competition with abnormal pricing." Although the statement is less than clear and instructive, it can easily be inferred and perceived that the key term is "abnormal pricing", which is directly linked to the current situation in the Chinese, and to different extents, global electric vehicle market, and which presumably is the ongoing alternating price undercutting. This continual price reduction in the electric vehicle market has naturally created joy for many consumers, but has caused distress among the car brands, as well as governments who may have vested interests in the overall survival of the industry.

The glaring question that rose out of this initial development was whether this was exactly the kind of price arrangement that was meant to be prohibited by the anti-trust regulation. If yes, would this event serve as an example of a rare exemption that can be used in similar circumstances to avoid trouble in any particular industry where there is arguably "too much" competition?

Facially speaking, anti-trust regulation prohibits price arrangement and encourages competitors to compete on prices, among other things. Price reduction is generally recognized as healthy and will ensure benefits to consumers and the overall development of the industry. However, certain categories of price reduction are prohibited or prone to scrutiny, such as below-cost or below-average-cost price reduction, predatory pricing, etc. On its face, it is hard to conclude that the ongoing price war between these electric vehicle brands falls under any of these prohibited categories, as some brands seem to be doing well and generating profits from these supposedly lower-price vehicles. Nevertheless, many of the brands may be struggling and may predictably eventually drop out of the race in the long-run, resulting in less overall research and development efforts and additional concentration of operators, something which may be detrimental to certain stakeholders. Therefore, based on this example from Shanghai, we see that this kind of arrangement may under certain circumstances be supported by some stakeholders, or even regulators. In any case, there were still a lot of lingering questions on the justifications and risks of such concerted action, as initially evidenced by the fact that only one foreign brand signed this document, likely signifying inherent fear of anti-trust concerns that other foreign brands may have. This initial uncertainty, however, quickly turned into a common understanding that this kind of pledge will likely lead to anti-trust concerns, as evidenced by the fact that the China Association of Auto Manufacturers publicly and unequivocally retracted the "abnormal pricing" part of the pledge just two days after the signing, citing domestic anti-trust law concerns.

The first lesson for Thailand is that this kind of vaguely worded agreement should be avoided at all costs as it can indicate intention to avoid competition. Vagueness, when coupled with clear circumstances, can indicate clear intention. The retraction statement in China signifies to all of us that there is no question about the appropriateness of this type of concerted action. The more crucial and immediate issue for Thailand (and other countries as well) is the fact that it is yet to be known if this supposedly cancelled ceasefire will have any practical trigger-down effects in Thailand and other countries, and if yes, how will the local authorities react to what essentially amounts to a clear but abandoned arrangement on prices between domestic brands orchestrated offshore by parent entities.

If you have any questions in relation to the topic raised in this briefing, please contact the authors listed in the left-hand column.

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