



Article by

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China Inroads supports innovative companies in their expansion to the Chinese market. "China belongs to the Chinese." This philosophy is the guidance for how we match companies with the right parties and markets in China, to create a successful and effective venture.



## → ANTI-MONOPOLY OR ANTI-FOREIGN? CHINA'S ANTI-MONOPOLY PROBES AFFECT EAST AND WEST

Monopoly is a game we all know, but when one plays it in China the rules are more complicated, especially for foreign players. In 2008 China passed the so-called Anti-Monopoly Law, but this did not seem to impact Western companies initially. The measure only caught widespread attention in the media when several famous Western car brands were fined this summer. This made the Chinese market less attractive for Western companies, because a heavy fine would be imposed on those who were deemed to obstruct fair competition. We already highlighted the AML in our June Newsletter about Politics in China, but these developments cast a new light on this law. We will look at the impact of these developments on the Chinese business environment and how it may influence Western businesses.

### Stricter rules and multiple targets

Since the Anti-Monopoly Law came into effect on August 1, 2008 its effectivity was already questioned. In order to improve its effectivity, the National Development and Reform Commission (NDRC) initiated anti-monopoly probes last August. These were aimed at very diverse industries such as alcoholic beverages, milk powder producers, telecommunication and car manufacturers. Among these, the Chinese car sector is especially dominated by well-known foreign car brands such as Mercedes Benz, Volkswagen, Porsche and Chrysler. Many of these companies were targeted in the recent anti-monopoly probes and received a record-high penalty of 1 billion US dollars. Presumably, they had too much leverage over car dealers and auto part suppliers, enabling them to control prices.

Western media mostly portrayed these probes as biased toward foreign companies and depicted the affected companies as victims. Dr. Florian Schneider, a professor specialized in Chinese media at Leiden University, explains that "Chinese and Western media have both focused on the Western cases, because you can get in a lot of trouble when reporting on domestic cases. If you report on something like this, you do show the public on the one hand that something is done about the problem, but at the same time you risk revealing how big the problem actually is. So reporting on how massively problematic the monopoly practices are in China among Chinese companies makes it seem as if the entire industry is corrupt and wrong." Besides one-sided reports, HIL International Lawyers & Advisers mentions an important aspect the media overlook.



**“Foreign companies may feel they are ‘targeted’ but, as Chinese premier Li Keqiang said, they account for only 10 percent of those companies involved.”**

Because of the huge scale, the anti-monopoly probes have also been called an anti-monopoly campaign in Western media. However, Dr. Wang, a scholar of Chinese politics, doubts the appropriateness of this term. “A campaign requires much more organization so I would rather call them cases instead. What is more, the prior investigation of these cases already dates back to 2008 when the AML came into effect,” she explains. Schneider agrees with Wang on this point. He mentions that “the party has been preparing anti-monopoly investigations for years since 2011, technically 2008, but the campaign only gained momentum in the recent year.”

Schneider also argues that the term anti-monopoly is misleading. “When you say anti-monopoly, you assume there is one company dominating the market. However, the government is investing 12 different car manufacturers, so clearly there is not one dominant company. Basically anti-monopoly is here meant to describe behind the scenes trade practices between companies or specific individual practices within companies that allow them to cash in on particular parts, practices or services.”

### **Impact on the market and foreign companies**

The news about these anti-monopoly probes has damaged Western companies’ faith in the Chinese market. But Wang argues that these developments also show a positive aspect, namely the fact that “China uses clear laws and regulations rather than abrupt and rigid administration measures to regulate the market. The less positive side, however, is the not so transparent law enforcement.” Schneider also mentions that the obscurity of the process “makes it very easy for the foreign press and foreign companies to view themselves as victims, rather than acknowledging that something has not been done correctly. It also does not help that the Chinese government has a track record of drawing up laws which are not transparent, pushing them through and then saying that something was not in accordance with law. From a European perspective, that looks like rule by law and not rule of law. It is of course easy to say that someone did not do something according to the rules if you are the one drawing up all the rules.”

HIL mentions another important aspect of these probes, “the aim of the AML is to protect the consumer. Some experts believe that Chinese regulators have been trying to win over the general population by tackling high consumer prices in China. As we can see, the prices of auto parts in China have decreased dramatically as a response to the investigations.” Wang agrees that Chinese consumers benefit from decreased car prices and mentions that these probes could also have been used to compensate for the excessive preferential policies that were granted to foreign companies. She adds:

## “The record-high fine is a useful tool to protect China’s domestic industry amidst pressures for upgrading.”

Western companies that are planning to enter the Chinese market might now face a fine if the NDRC sees them as obstructing the fair competition in the Chinese market. Therefore, HIL advises companies to “evaluate the anti-monopoly risk in the company with the assistance of professional lawyers who are familiar with the enforcement and practice of Chinese Anti-Monopoly Law.” Wang also recommends Western companies to become “more familiar with China’s commercial regulation updates in order to avoid later accusations.”

Lastly, HIL emphasizes that the Chinese market remains very attractive for foreign companies. “First, there is no doubt that foreign investment is just as welcomed as before in China. We can see this from the attitude of the Chinese government and the recently amended Foreign-Invested Enterprises Laws. Second, the Chinese AML just came into force in 2008. Compared with the anti-monopoly practice in Europe and America there is still a long way to go for China, but we believe that the enforcement of the AML will be more practical and professional in the future.”

## What China Inroads can do for you to increase your chances of success?

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You are welcome to visit us for a free consultation at one of our offices.