SPC Guiding Case No. 221: Zhang [X]xun v. Yibin Heng [X] Investment Group Co., Ltd., Sichuan Yibin Wu [X] Building Materials Industry Co., Ltd., et al. (Monopoly Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / monopoly / horizontal monopoly agreement / implementer of monopolistic conduct / compensation for losses

Holding

No one may benefit from his or her own unlawful conduct. A horizontal monopoly agreement is manifestly unlawful. Where a business operator participating in a horizontal monopoly agreement sues the other business operators participating in the agreement as defendants and requests compensation for its losses during its participation in and performance of the agreement based on the provisions on civil liability of the Anti-Monopoly Law of the People's Republic of China, the people's court shall not support the claim.

Basic Facts

In March 2010, the Civil Affairs Bureau of Yibin City, Sichuan Province, approved the establishment of the Yibin [X] Association ("the [X] Association") after examination, as an industry social organization. Cao [X]jun was the president, Ruan [X]cheng the vice president, and Chen [X]qin the secretary-general. The promoters and sponsoring entities were Cao [X]jun and Yibin Heng [X] Group Co., Ltd., Li [X]gao and Sichuan Yibin Wu [X] Building Materials Industry Co., Ltd. ("Wu [X] Company"), and Ruan [X]cheng and Yibin County Si [X] Building Materials Co., Ltd. ("Si [X] Company"). The member entities of the [X] Association initially numbered more than 50, including the Yibin [X]dian Machine-Made Brick Factory ("the [X] Brick Factory") under the name of Zhang [X]xun.

In July 2009, the "Yibin City Brick-Making Industry Working Meeting" was held. The meeting minutes recorded: the title bar was "oversupply, goods cheap when plentiful… supply-demand balance, goods precious when scarce…"; the specific plan was to establish a brick association council and a brick association coordination office. The scope of activities included brick factories in Cuiping District of Yibin City and within 30 kilometers, and Baixi and brick factories within 15 kilometers. It coordinated with Yibin Ren [X] Trading Co., Ltd. ("Ren [X] Company") to establish local brick associations in surrounding counties and districts to prevent outside products from entering the region. The shutdown plan was to suspend brick factories with 50% of production capacity, with the producing brick factories subsidizing the suspended brick factories. Ren [X] Company, together with the brick association coordination office, signed lease-contract contracts with the suspended factories and cooperation agreements with the producing factories. The suspended factories received monthly lease-contract fees from Ren [X] Company (i.e., part of the management fees paid by the producers), and the producing factories paid market management and technical guidance fees to Ren [X] Company. It also provided: "The shutdown and adjustment of brick factories must be agreed upon by the brick association, and no factory may make adjustments without authorization; any factory making adjustments shall be deemed in breach, with a penalty of RMB 200,000 in cash per breach, to be recovered by the coordination office and Ren [X] Company." "After suspended brick factories stop firing, they shall not sell stock bricks, and shall be uniformly cut off without exception… those selling privately shall be deemed in breach, with a penalty of ten times the sale amount per breach." During

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the same period, a branch, the predecessor of the [X] Association, formulated the Interim Administrative Measures of a Branch of the Yibin Building Materials Industry Association ("the Interim Administrative Measures"), expressly proposing the specific arrangement of "preventing outside products from entering and controlling brick and tile output internally," dividing local brick and tile enterprises into producing enterprises and suspended enterprises. In July 2009, the branch signed agreements such as the Production Suspension and Rectification Contract and the Technical Service Contract with the [X] Brick Factory and other brick and tile factories. According to the Verified Output Schedule of Yibin City Brick Factories (Producing Factories), there were 19 producing factories in total. According to the Verified Output Schedule of Yibin City Brick Factories (Suspended Factories), there were 31 suspended factories in total, including the [X] Brick Factory.

On March 31, 2011, the Yibin Municipal Economic and Information Commission of Sichuan Province ("the Yibin Economic and Information Commission") issued the Notice on Ordering the Yibin [X] Association to Suspend Activities, which stated: "Our commission has recently received reports from the public that your association, in carrying out activities, has not strictly operated in accordance with the association's charter, and has committed acts exceeding the scope prescribed by the association's charter. Pursuant to the requirements of industry association administration, we hereby order your association to immediately suspend all activities, carry out comprehensive rectification, and report the rectification in writing to our commission." On April 18, 2011, the [X] Association issued the Report on the Cleanup and Rectification Work and the Request to Resume the Normal Activities of the [X] Association to the Yibin Economic and Information Commission, which stated: "Due to the inadequate performance of duties by the association's main leaders… certain brick factories quoted inflated prices and fabricated false information about supply and demand… we believe that the brick association bears unshirkable responsibility for such results and must correct them promptly…" "The objectives were clarified: first, the market demand must be satisfied unconditionally…; second, supply must be made at market-reasonable prices (the current guidance price confirmed by relevant departments is: factory price not exceeding RMB 0.33 per standard brick), and member entities are not allowed to supply above the association's guidance price; third, quality must be ensured…" In September 2011, the [X] Association stopped distributing production-suspension support funds.

On March 6, 2013, the Sichuan Administration for Industry and Commerce issued an Administrative Penalty Decision against the [X] Association, finding that the Interim Administrative Measures reached by member entities with competitive relationships organized by the [X] Association, which provided for the suspension of some enterprises, thereby controlling the production volume of bricks in the Yibin brick and tile market and controlling the direct withdrawal of suspended member entities from competition in the Yibin brick and tile market, severely restricted market competition and constituted a monopoly agreement restricting the production volume of goods. The conduct of the parties in organizing member entities to reach and implement the monopoly agreement disrupted the fair and orderly competitive order of the Yibin brick and tile market.

Later, Zhang [X]xun sued in the people's court, claiming that he had stopped production pursuant to the Production Suspension and Rectification Contract and had only received a small amount of production-suspension support fees before September 2011. The above conduct in substance had the effect of excluding Zhang [X]xun from competition, constituted monopolistic conduct, and infringed the legitimate rights and interests of Zhang [X]xun. He claimed an order that Wu [X] Company, Si [X] Company, Yibin Heng [X] Investment Group Co., Ltd., the [X] Association and Cao [X]jun jointly and severally compensate his economic losses of RMB 336,000 and reasonable expenses of RMB 80,000.

Judgment

On December 24, 2019, the Chengdu Intermediate People's Court of Sichuan Province rendered Civil Judgment (2018) Chuan 01 Min Chu No. 855: (1) within fifteen days from the effective date of the judgment, Wu [X] Company, Si [X] Company, Cao [X]jun and the [X] Association shall jointly and severally compensate

Zhang [X]xun economic losses of RMB 336,000 and reasonable expenses of RMB 5,000; and (2) the remaining claims of Zhang [X]xun were dismissed. After the judgment was pronounced, Wu [X] Company, Cao [X]jun and the [X] Association were dissatisfied and appealed to the Supreme People's Court. On November 6, 2020, the Supreme People's Court rendered Civil Judgment (2020) Zui Gao Fa Zhi Min Zhong No. 1382: (1) the Civil Judgment (2018) Chuan 01 Min Chu No. 855 of the Chengdu Intermediate People's Court of Sichuan Province was revoked; and (2) all of the claims of Zhang [X]xun were dismissed.

Reasoning

The Supreme People's Court held: as one of the implementers of the horizontal monopoly agreement in this case, whether Zhang [X]xun had the right to demand that the other implementers of the monopoly agreement compensate his alleged economic losses should be considered in light of the legislative purpose of Article 50 of the Anti-Monopoly Law, the characteristics of the alleged monopolistic conduct, and the legal effect of damages compensation.

First, the legislative purpose of Article 50 of the Anti-Monopoly Law. Article 50 of the Anti-Monopoly Law provides that a business operator who carries out monopolistic conduct and causes losses to others shall bear civil liability in accordance with the law. The legislative purpose of this Article is to provide a civil judicial channel for stopping and combating monopolistic conduct, and to provide civil remedies for subjects harmed by monopolistic conduct. If the plaintiff is not the victim of the monopolistic conduct regulated by the Anti-Monopoly Law, but rather the implementer of the monopolistic conduct, its claim for damages is in substance a demand to divide up the monopoly profits, and it is therefore not a subject whom the Anti-Monopoly Law intends to remedy. In this case, Zhang [X]xun was one of the participants and implementers of the horizontal monopoly agreement alleged in this case, and, through participating in and implementing the alleged monopolistic conduct in this case, had obtained a share of the monopoly profits over a certain period; he was not a victim of the monopolistic conduct whom the Anti-Monopoly Law intends to remedy. Second, a person requesting damages relief must have engaged in conduct that is proper and lawful. Even if a subject who participates in and implements unlawful conduct suffers losses from that participation and implementation, such losses shall not be remedied on account of the impropriety of the subject's own conduct. Zhang [X]xun voluntarily accepted production suspension and rectification in the Production Suspension and Rectification Contract, and participated in and implemented the horizontal monopoly agreement in this case; his own conduct was unlawful, and the losses he suffered thereby should not be remedied. Finally, granting damages to the implementer of monopolistic conduct would produce the negative legal effect of encouraging and supporting the relevant monopolistic conduct. In this case, the losses from monopolistic conduct claimed by Zhang [X]xun were in substance a demand to enforce the horizontal monopoly agreement in this case and to divide up the group monopoly proceeds according to the agreement's provisions on the distribution of monopoly interests. If Zhang [X]xun's claims were supported, it would amount to maintaining and encouraging the unlawful conduct.

In sum, the implementer of a horizontal monopoly agreement has no right to demand, based on the Anti-Monopoly Law, that the other implementers of the monopoly agreement compensate its alleged economic losses. As an implementer of the horizontal monopoly agreement in this case, Zhang [X]xun had no right to benefit from his own unlawful conduct, and the people's court did not support his claims for compensation for losses.

Relevant Legal Provisions

Article 60, paragraph 1, of the Anti-Monopoly Law of the People's Republic of China (2022 Amendment) (this case applied Article 50 of the Anti-Monopoly Law of the People's Republic of China, effective 2008).

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