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International Spotlight: Price Gouging Restrictions in China

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China has a very different approach to price gouging restrictions than the state level system in place in the United States. As the Chinese market is of particular importance to our readers and their businesses, operators may benefit from unpacking the anti-price gouging rules contained in national laws and the reinforcing measures against price gouging adopted by Chinese regulators since the outbreak of the COVID-19.

PRC Price Law

In China, the state regulates price gouging centrally through the PRC Price Law, which was originally promulgated on December 29, 1997. In addition to the Price Law, certain price gouging practices may also raise anti-monopoly, unfair competition or consumer protection concerns under the PRC Anti-Monopoly Law, the PRC Anti-Unfair Competition Law, or the PRC Consumer Rights and Interests Protection Law.

Under the Price Law, with some exceptions, business operators in China are required to set prices for their goods and services based on the costs of manufacturing, operation and market supply and demand, and as such reasonable price increases due to rising costs or changes in market supply or demand are allowed. (This does not account for the limited number of goods and services that are subject to government-set prices or government-guidance prices.)

Certain types of “unfair price behaviors” are also explicitly prohibited, including:

- fabricating and/or disseminating price increase information to drive up prices;

- hoarding commodities with tight supply or abnormal price fluctuations;
- using other price gouging practices to push up commodity prices excessively;
- using misleading or false pricing practices;
- covertly manipulating prices by raising or reducing grade levels of goods or services; and
- illegally seeking exorbitant profits (even absent any market power).

SAMR Guidance

In response to the COVID-19 pandemic, and to deter hoarding and price gouging of daily necessities and epidemic prevention products, Chinese regulators took additional steps to enhance the implementation of the Price Law and other relevant laws and regulations. On February 1, 2020, the China State Administration for Market Regulation ("**SAMR**", the agency that enforces the Price Law) issued the Guidance on Investigation and Handling of Illegal Acts of Price Gouging During the Novel Coronavirus Pneumonia Epidemic Prevention and Control Period (the "**SAMR Guidance**"). The SAMR Guidance sets out detailed guidance on the application of the Price Law and determination of illegal price gouging for daily necessities and products related to epidemic prevention.

Specifically, the SAMR Guidance categorizes the following practices of excessive pricing as illegal price gouging:

- selling the same product in such a manner that results in the margin between the seller's cost and the selling price being significantly higher than that of the last actual transaction on or before January 19, 2020 (being the day immediately prior to the Chinese government's official declaration of the Novel Coronavirus as a Class B level communicable disease); or
- otherwise selling products at a margin above levels determined as acceptable by the local counterparts of SAMR. Although SAMR has not issued national guidance on acceptable margins, local governments have set thresholds ranging between 15% and 35%.

Penalties

Violation of the price gouging laws may result in administrative penalties, including: (i) restitution, (ii) confiscation of any illegal gains and a fine up to 5 times of the illegal gains (capped at RMB3 million, or approximately $450,000 USD, if there is no illegal gain), (iii) halting business operation pending rectification, and/or (iv) revocation of business licenses.

For more significant violations (e.g., those involving a large amount of illegal gains, or causing significant market disruption), the individuals directly responsible for the violations may incur criminal liability, which may include imprisonment for up to 5 years (or longer for "extremely serious" violations).

In addition to administrative and criminal penalties, affected consumers may also launch civil lawsuits against violators to recover losses caused by the violation.

Follow this space

This international spotlight series will unpack country-specific laws that may be of particular interest. Watch for additional overviews of price gouging restrictions applied in markets that are important to our readers.

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