



PRC Law Newsflash
26 February 2010

FAIR TRADING RULES INTRODUCED FOR BOOKS AND PERIODICALS

Introduction

The *Book Fair Trading Rules (Rules)* were jointly promulgated on 8 January 2010 by the Books and Periodicals Distribution Association of China, the Publishers Association of China and the China Xinhua Bookstore Association (collectively, the **Associations**), and came into effect as of the same date. They aim to regulate the trading of new books, to prohibit dealings with unlicensed suppliers, and to set limits on the pricing of books by suppliers and distributors.

The Rules are not legally binding, but are enforceable against members of the Associations. While the Associations do not have the authority to regulate non-members, the majority of the suppliers and distributors of print publications in China are their members. The Associations are also closely related to the national industry regulator, the General Administration of Press and Publication (**GAPP**). As such, the implications of the Rules are likely to be influential and will need to be closely observed and monitored by industry players.

This newsflash summarizes the key provisions of the Rules and analyzes their implementation.

Background

China's print industry has traditionally been dominated by state-owned publishers and distributors, with books distributed primarily by Xinhua, the nationwide state-owned bookstore chain.

However, since the 1980s and in particular after China's accession to the World Trade Organization in 2001, the authorities have allowed greater private (including foreign) participation in the wholesale and distribution of books and other printed matter. As private companies have proven to be more nimble in adopting new distribution technologies, state-owned distributors have been left behind. Private companies operating online are also able to offer lower prices for books, due to the warehousing and distribution efficiencies made possible by the Internet and other information technologies.

While the wording of the Rules is vague, they essentially attempt to introduce business practices which help to support state-owned publishers and distributors, while bringing order to certain aspects of the industry.

Key Provisions of the Rules

1. Retail Discount Limitation

The Rules state that the retail price of new books should be no less than 85% of their cover price; or in other words, that retailers may not offer discounts of more than 15% on new books. It would seem that this limitation is intended to prevent distributors, especially private online entities, from undercutting their competitors. "New books" are defined under the Rules as books published during the past 12 months.

2. Distribution Channels

Distributors may only order books from suppliers which hold the requisite operating permits. They are forbidden from ordering books from retail enterprises, individuals or other unlicensed enterprises. These requirements reinforce Article 32 of the *Regulations on the Administration of Publications (Publications Regulations)*,¹ and attempt to reduce the number of unlicensed suppliers operating in China.

3. Credit Period

Under the Rules, a distributor generally has to pay its supplier within 180 days after receiving an order of books. If the supplier has provided a value-added tax invoice for the order, payment should be made within 90 days after that invoice was provided. This provision provides greater certainty for suppliers, who are often pressured by distributors to offer long periods of credit.

4. On-Sale Price Restriction

Suppliers that purchase books from upstream wholesalers may not sell them on to online bookstores, retail stores or individuals at lower prices. In addition, suppliers are prohibited from setting a final price of more than 120% of what they initially quoted.

¹ Promulgated by the State Council on 21 December 2001 and effective as of 1 February 2002.

TAL Analysis

1. Enforcement Mechanisms

While the Rules do not have legal effect, they are applicable to, and enforceable against, the members of the Associations - which comprise the majority of book publishers and major distributors in China.

The Rules also purport to allow the Associations to ask the GAPP to punish any distributor or supplier, whether or not a member of the Associations, that violates their provisions. As the Rules were reportedly drafted with the involvement of the GAPP and reflect the GAPP's own policies, and given the close ties between the GAPP and the Associations, such a request may well be entertained.

The Associations also claim the right to advise the GAPP to revoke the preferential treatment or permits it has previously granted to a violating entity (again, even if it is not a member of the Associations). This right can be reinforced by internal requests by the Associations that their members boycott certain entities.

Given the broad reach of the Rules and their support by the GAPP, all industry players are expected to pay close attention to their provisions.

2. Validity of the Retail Discount Limitation

The enforceability of the Rules could arguably be challenged under the *Anti-Monopoly Law (AML)*, which holds that any price-fixing agreement is illegal unless an exemption applies. The limitation on discounts discussed above effectively sets a minimum price for new books sold by retail distributors to consumers, which could be interpreted as a form of price-fixing.

The Associations have reportedly consulted with the AML enforcement agency on this issue, and have been advised that the Rules are valid as long as they remain binding only on their members. However, the fact that the Rules might ultimately affect non-Association members as well increases the likelihood – however small – that AML challenges will be brought.

If the discount limitation is challenged by members of the Associations or other industry players under the AML, the Associations could lobby for an exception and could also argue that it is international custom to exempt book distributors from anti-monopoly regulations.

3. Effectiveness of the Credit Period

Generally speaking, the distributors (both foreign and Chinese) of books in China have a stronger bargaining position than the companies they supply. Therefore, the Associations' efforts via the Rules to define the time period within which distributors must pay their suppliers will only be effective in practice if the Associations address this imbalance.

Conclusion

Owing to the strength of the relationship between the Associations and the GAPP, the GAPP's involvement in the drafting of the Rules, and the extensive membership of the three Associations, it is unlikely that any significant legal obstacles will arise to challenge the Rules effective implementation. The prohibition on unlawful distribution channels is not likely to be contentious as it merely reinforces the current Publications Regulations. It is possible the retail discount limitation could be challenged under the AML, but current indications are that this is unlikely.

From a practical standpoint, however, until and unless the Rules are formalized into binding law, their effectiveness will rest on the ability of the Associations to persuade their members to adhere to them, and the willingness of the GAPP to actively support their implementation.

* * *

This article was written by associate Jing Bu and paralegal Patrick Mayoh, with the assistance of partner Kevin Guo (kguo@TransAsiaLawyers.com).

Beijing

Suite 2218 China World Office 1
1 Jianguomenwai Avenue
Beijing 100004, China
Tel: (86 10) 6505-8188
Fax: (86 10) 6505-8189 / 98

Shanghai

Unit 1101 Platinum
233 Tai Cang Road
Shanghai 200020, China
Tel: (86 21) 6141-0998
Fax: (86 21) 6141-0995 / 6

<http://TransAsiaLawyers.com>

This newsflash is for informational purposes only and does not constitute legal advice. Use of this newsflash does not create an attorney-client relationship between TransAsia Lawyers and the reader. Readers should contact appropriate legal counsel for advice on any particular issue. Entire content copyright is owned by TransAsia Lawyers. Reproduction and distribution of this newsflash in whole or in part without the written permission of TransAsia Lawyers is expressly prohibited.

This newsflash may have been sent via e-mail. We cannot guaranty the completeness of messages transmitted by e-mail, and will not be responsible for any modification made to this message after sending by us.

Uploaded on 26.02.2010