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PRESS RELEASE

Competition and Anti-trust

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QQ VS 360

Recently, the disputes between Tencent's QQ and Qihoo's 360 software have caused quite a stir in the press

In September 2010, Qihoo 360 launched a software called "360 Privacy Protector". This product is used to keep tabs on other software on a user's computer and is able to detect a number of things, for instance the type of data that another software extracts from a user's computer. The objective of this product is to shield a user from software which illegally extracts or retains a user's personal data; in other words, to protect a user's privacy.

On 26 September 2010, Qihoo 360 published an article on their website entitled "360 Privacy Protector 1.1 Beta – new function – privacy clean up function". In this article, Qihoo 360 alleged that its 360 Privacy Protector software had recently detected that a "certain instant messaging software" was found to be "peeping" at the private files and data of users, without first obtaining the approval of those users. The article itself did not name which instant messaging software Qihoo 360 was referring to. However a screenshot in the article bore the logo of the Tencent QQ instant messaging software.

On 14 October 2010, Tencent Technology (Shenzhen) Limited and Shenzhen Tencent Computer System Limited filed an application with the Beijing Chaoyang District People's Court.

Further in Tencent QQ's court application, they claimed that they could properly be construed as a competitor to Qihoo 360 as the latter also manufactures and supplies their own anti-virus or security software (i.e. called "QQ Computer Housekeeper").

On 3 November 2010, the Court accepted this case (the AUCL allegation).

On the same day Tencent QQ issued a newsletter to all its users entitled "A letter to all users of QQ". Through this newsletter, Tencent QQ informed all users that they have made the "difficult" decision of making the use of QQ instant messaging service incompatible with the use of 360 privacy or anti-virus software. In other words, QQ users who choose to use 360 privacy or anti-virus software will no longer be able to use QQ instant messaging in the same instance. Tencent QQ explained that this was mainly because they were not confident that they could continue to protect their user's privacy (including data such as chats and passwords), if they continued to use the 360 line of security software. In its newsletter, Tencent QQ also requested that users use its "QQ Computer Housekeeper" or other antivirus or security software in place of the 360 line of security software. [Note: From 3 November

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2010, users of QQ reported that they weren't able to use the 360 line of security software and QQ at the same time. However, a few days later, reports suggest that government agencies intervened and users reported that their QQ and 360 softwares were able to be used concurrently.]

On 4 November 2010, Li Changqing (a Beijing based lawyer) filed a complaint with the State Administration of Industry and Commerce (SAIC) requesting that the SAIC should commence an antitrust investigation against Tencent QQ. In his application, Li alleged that Tencent QQ had abused its dominance by restricting QQ users or "forcing" QQ users to uninstall 360 software, without a valid reason (in breach of Article 17(4) of the AML). Li also submitted a study report issued by iResearch Consulting Group – this report showed that Tencent's market share in the instant messaging software market was approximately 76.2%. Li requested that the SAIC impose an appropriate penalty on Tencent QQ for its alleged breach of Article 17(4) of the AML (the AML allegation).

It quite be interesting to see how the AUCL and the AML allegations pan out – i.e. how the former court case is resolved; and whether the latter will result in an SAIC investigation or present a catalyst for an AML based private action in court. "Complex AUCL and AML issues are raised in this case and we will keep a close watch on developments." Commented by Edward Lehman.

Consumer

China's consumer market

To a certain degree, change is already underway. In real terms, Chinese spending has picked up and is growing annually at around 10%. Even before Hu's speech, the Chinese government was already attempting to facilitate this process, spending more on social projects to help build social welfare systems. These safety nets are desperately needed. Most Chinese don't have health insurance, pensions, or unemployment benefits, and the lack of a social backstop has incentivized a savings rate that's more than 50% of GDP, an unprecedented level for a major economy.

The government has launched several other programs as well. Schools in rural areas are getting checks from local governments; national pilot projects for pensions are being tested and rolled out in Beijing. Chinese Vice Premier Li Keqiang, the heir apparent for the premiership in 2012, is touring the Northern Chinese countryside this week, calling for local governments to build low-income housing and asking local hospitals to provide better services to low-income families.

In order to move the process forward, China now needs to undertake the largest structural economic shift the country has seen since it liberalized its markets in the 1970s. The economy, which remains hugely dependent on heavy industry, needs to move away from

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this focus and toward finance or service sectors jobs and small businesses.

“This may prove to be the case, but the speed at which this shift occurs will have very much to do with how quickly China can morph into a more balanced economy with developed domestic consumer markets. Until that happens, the country will forever be exposed to economic fluctuations in the West -- and as we have seen over the past few years, these fluctuations can be quite extreme.” Commented by Edward Lehman.

Lehman, Lee & Xu is a prominent Chinese corporate law firm and trademark and patent agency with offices in Beijing, Shanghai, Shenzhen, Hong Kong, Macau, and Mongolia. The firm has been recognized as one of the top trademark firms in China by several intellectual property magazines and is managed by Mr. Edward Lehman, a leading expert on corporate law with 20 years of practice experience in Mainland China.

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