

China Monthly Antitrust Update

August 2016

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Legislation

NDRC Publishes Announcement Concerning Solicitation of Public Comments for the Guidelines on Determination of Illegal Gains and Amount of Fines Concerning Monopolistic Conduct by Undertakings (Draft for Comments)

On 28 July 2016, the National Development and Reform Commission (“**NDRC**”) published an announcement concerning the solicitation of public comments for the *Guidelines on Determination of Illegal Gains and Amount of Fines Concerning Monopolistic Conducts by Undertakings (Draft for Comments)* (“**Guidelines**”). Pursuant to the announcement, nearly 200 pieces of comments and suggestions had been raised by units and individuals from foreign antitrust enforcement agencies, domestic and foreign enterprises, industrial associations, research institutes and law firms via emails and letters, which gave positive appraisal to the guiding principle, basic framework, writing style and main content of the Guidelines. It is also generally recognized that the enactment of the Guidelines will promote the transparency of administrative antitrust penalty, enhance the legal certainty as well as help the undertakings to establish better antitrust compliance. The relevant parties also provided specific suggestions regarding the concept and methods to determine the illegal gains and fines. NDRC will make thorough study and research on these suggestions and take them into consideration when perfecting the Guidelines.¹

State Council Deploys the Tasks Assignment Concerning the Establishment of IPR Powers and Stresses the Perfection of Antitrust System on IPRs

On 18 July, the State Council published the *Tasks Assignment Plan Concerning Several Opinions of the State Council on Accelerating the Establishment of Intellectual Property Right Powers under the New Situation* (“**Assignment Plan**”). The Assignment Plan requests relevant departments to make further specification concerning the tasks involving themselves and develop specific measures as soon as possible. Article 36, 37 and 38 in the part of “Regulating the conduct of Intellectual Property Rights Abuse” in the Assignment Plan respectively makes detailed assignment on perfecting the antitrust legal system and supervision system of intellectual property rights (“**IPRs**”) and the license policy of SEPs as well as the specific responsible departments.²

¹http://jjs.ndrc.gov.cn/fjgld/201607/t20160728_812936.html

²http://www.gov.cn/zhengce/content/2016-07/18/content_5092397.htm

NDRC Analyses the Fair Competition Review System: Setting up 18 “Forbidden” Standards for Administrative Power

On 7 July, the State Council Information Office of the People’s Republic of China held a press conference. Mr. Hu Zucai, Deputy Director-General of NDRC, introduced the establishment and implementation situation of the *Opinions on Establishing the Fair Competition Review System in Market System Development* (“**Opinions**”). The Opinions sets up 18 “Forbidden” standards for administrative power with five guarantee measures supporting its implementation, which is an innovative top level design preventing the elimination and restriction of competition by administrative power abuse. Such top level design clarifies the boundaries between government and market and will also benefit the development of new business forms and models.³

³<http://finance.people.com.cn/n1/2016/0708/c1004-28534990.html>

Authorities

CEB of SAIC Meets a Delegation from the State Grid

On 25 July 2016, the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (“**CEB**”) of the State Administration for Industry and Commerce (“**SAIC**”) met a delegation, led by Mr. Han Jun, Deputy General-Manager of the State Grid Corporation of China (“**State Grid**”). The CEB of SAIC introduced the enforcement situation against public enterprises which restricting competition and conducting monopolistic conduct implemented by Administrations for Industry and Commerce (“**AICs**”). The State Grid introduced the development situation in electricity supply industry. They also exchanged opinions on existing problems which are suspected of monopoly and anti-unfair competition in electricity supply industry. The State Grid expressed that they will explicitly require that anyone in the industry shall strictly regulate its business operation in accordance with the relevant laws and regulations, fully support the special enforcement activity conducted by SAIC and proactively correct and rectify any irregularities.⁴

Guangdong DRC Holds Law Enforcement Training Program of Special Inspection Activity on Drug Price

In order to enhance the administrative law enforcement ability and relevant professional skills of the price-related enforcers in Guangdong Province, guarantee the successful development of Guangdong special inspection activity on drug price, PSIAMB under Guangdong Development and Reform Commission (“**DRC**”) held a law enforcement training program regarding the special inspection activity on drug price from 18 to 20 July. The leaders and key personnel from relevant price supervision and inspection departments attended the training program. This training program timely conveyed the spirit of the national special inspection activity on drug price and shared the knowledge on antitrust enforcement of drug price and the price supervision in drug market, etc..⁵

CEB of SAIC Sends Personnel to Attend the Antitrust Cases Seminar Held by Hunan AIC

On 15 July, CEB of SAIC sent personnel to attend the antitrust cases seminar held by Hunan

⁴http://www.saic.gov.cn/fldyfbzdzj/gzdt/201607/t20160725_170017.html

⁵http://www.sdpc.gov.cn/dffgwdt/201607/t20160725_812002.html

Administration of Industry and Commerce (“**Hunan AIC**”) in Changsha City. The relevant personnel from Hunan AIC and the experts and scholars from Hunan University and Changsha University of Science and Technology studied and discussed the legal issues involved in the antitrust cases investigated by Hunan AIC.⁶

SAIC Deploys the Antitrust Enforcement Focus of the Second Half of 2016

On 15 July, SAIC held “Symposium of Nation-wide AICs and Market Supervision Departments”. During the symposium, SAIC expressed that strengthening the antitrust and anti-unfair competition enforcement, which means that deepening the special action concerning rectifying the public enterprises for their conduct of restricting competition and monopolistic conduct, promoting the rectification of public enterprises. Proactively investigating and punishing the conduct of restricting and eliminating competition existed in industries that closely related to people’s livelihood, breaking the district block and industry block, as well as promoting the study of issues on antitrust and anti-unfair competition in new industries and new areas.⁷

Investment Promotion Agency of MOFCOM Convenes a Conference Focusing on Antitrust Issues in Auto Industry

On 13 July, the Second Quarter Conference of Investment Promotion Committee of Auto Industry under the Investment Promotion Agency of Ministry of Commerce (“**MOFCOM**”) in 2016 was held in Beijing. 40 representatives, including leaders and experts from NDRC and China Insurance Regulatory Commission (“**CIRC**”), representatives from auto enterprises, such as GM, Jaguar Land Rover, Volkswagen, etc. and institutes, for example, China Automotive Technology & Research Center, attended the conference. Mr. Lu Yanchun, Deputy Director-General of Price Supervision and Inspection and Anti-Monopoly Bureau (“**PSIAMB**”) of NDRC, and Ms. Xuan Ming, the Director of the Second Division of Property Insurance Regulatory Department under CIRC, respectively introduced and analyzed the issues of “Requirement and Influence of Antitrust Laws and Regulations on Auto Industry” and “Reform and Supervision Work of Commercial Auto Insurance in China” and exchanged opinions with representatives.⁸

⁶http://www.saic.gov.cn/fldyfbzdzj/gzdt/201607/t20160717_169853.html

⁷http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201607/t20160717_169842.html

⁸<http://tzswj.mofcom.gov.cn/article/c/201607/20160701361362.shtml>

Public Enforcement

NDRC Investigates and Punishes the Monopoly Agreements of Estazolam and Determines the Concerted Practice for the First Time

on 27 July, NDRC released three penalty decisions against three pharmaceuticals for reaching and implementing monopoly agreements of estazolam API and tablets. The investigation showed that Huazhong Pharmaceutical, Shandong Xinyi Pharmaceutical and Changzhou Siyao Pharmacy reached and implemented the jointly boycotting monopoly agreements in estazolam API market and reached and implemented the price-fixing or price-altering agreements in estazolam tablets market. NDRC ordered the parties concerned to cease the agreements immediately and fined from 2.5% to 7% of their respective turnovers of estazolam in 2015, in total of CNY 2,603,800, pursuant to the nature, degree and lasting period of the monopolistic conduct and their different roles played in the agreements as well as their respective cooperation situation. In this case, the three pharmaceuticals did not conclude any written agreement on “jointly boycott” or “price increase consensually”. One of the three pharmaceuticals even did not make oral commitment on joining in the above conduct. However, NDRC determined that the three pharmaceuticals implemented concerted practice on the condition that they had communication of intention and such conduct constituted monopoly agreements pursuant to the Article 5 of the *Provisions on Anti-Price Monopoly*. This is the first case that the “concerted practice” has been determined as monopoly agreement in practice, which is a significant breakthrough in China’s antitrust enforcement practice.⁹

Price Bureau of Hubei Province Fines Five Natural Gas Companies for Price Monopoly Conduct

Recently, under the guidance of NDRC, Price Bureau of Hubei Province imposed a total fine of CNY 2,955 thousand on five natural gas companies for their price monopoly conduct. The five companies, Xianning Branch of Petro China Kunlun Gas Co., Ltd, Xiantao Petro China Kunlun Gas Co., Ltd, Daye China Resources Gas Co., Ltd, Jiangxia China Resources Gas Co., Ltd and Shishou Natural Gas Co., Ltd, abused their dominant market positions by selling commodities at unfairly high prices. NDRC and price authorities at all levels will keep combating price monopoly conduct in public areas, including natural gas and water supply,

⁹http://jjs.ndrc.gov.cn/qzdt/201607/t20160727_812589.html

etc., to protect a fair competition in the market and safeguard the interests of consumers.¹⁰

SAIC: China AICs Register 478 Cases of Restricting Competition in the First Half of 2016

Up to 30 June 2016, AICs in China had registered 478 cases and closed 118 cases against the public enterprises for the conduct of restricting competition pursuant to the *Anti-Unfair Competition Law of the People's Republic of China*, with a total value of CNY 270 million involved and a total value of CNY 27.38 million fined or confiscated. Mr. Yu Fachang, spokesperson for SAIC, stated that AICs in China focused primarily on the conduct of restricting competition and monopolistic conduct engaged by public enterprises, and stepped up the law enforcement efforts in unfair competition and antitrust enforcement in the first half of 2016. The authorities had organized the overhaul against forced transaction and arbitrary charges existed in sectors of water supply, electricity supply, gas supply and public transportation in which people expressed concerns.¹¹

Sichuan AIC Regulates Conduct of Restricting Competition and Monopoly against Public Enterprises

Since the special enforcement action to regulate the conduct of restricting competition and monopolistic conduct against public enterprises was launched in April 2016, AICs and market supervision departments at all levels in Sichuan Province had guided the relevant enterprises to conduct self-examination and self-correction and at the same time stepped up investigation and punishment efforts. Up to the end of June 2016, authorities in Sichuan Province had registered and investigated 59 cases relating to public enterprises restricting competition, which involves ten public sectors, including water supply, electricity supply, gas supply, public transportation and funeral service, etc., with a total value of CNY 12.465 million involved, 24 cases of which had been closed.¹²

¹⁰http://jjs.ndrc.gov.cn/fjgld/201607/t20160712_811023.html?from=singlemessage&isappinstalled=0&sukey=3997c0719f151520833376e688bec89936bffd8f8ce2683764e484d297163342010b057ce183697ae170e42420ef92c6

¹¹<http://www.chinanews.com/cj/2016/07-22/7948727.shtml>

¹²http://news.xinhuanet.com/politics/2016-04/14/c_128895051.htm

Merger Control

MOFCOM Releases 22 Streamlined Cases in July

Up to 31 July 2016, MOFCOM has released 22 streamlined cases in July on its website, with total amount reaching 481 so far.¹³

MOFCOM Releases Unconditionally Cleared Cases in the 2nd Quarter of 2016

On 5 July 2016, MOFCOM released a list of unconditionally cleared concentration of undertakings in the second quarter of 2016, which includes 93 cases in total.¹⁴

The Second Case Adopting “Fix It First” Approach in China: MOFCOM Conditionally Approves AB InBev’s Proposed Acquisition of SABMiller

On 29 July, MOFCOM conditionally approved the proposed acquisition of SABMiller by Anheuser-Busch InBev (“**AB InBev**”). In November 2015, AB InBev reached an Acquisition Agreement that AB InBev would acquire 100% shares of SABMiller. This transaction had been cleared in 23 countries and regions including EU, South Africa and US. AB InBev’s primary brands in China market include Budweiser, Harbin Beer, Sedrin Beer, etc.. Except holding 49% shares of China Resources Snow Breweries, SABMiller also sells a small amount of malt liquor in China market. In the approval announcement, MOFCOM required AB InBev and SABMiller to perform the following obligations: to divest SABMiller’s 49% shares in China Resources Snow Breweries; to sell such equity to China Resources Beer; such divestment has to be carried out within 24 hours of AB InBev completing its acquisition of SABMiller. This is the second case adopting “Fix It First” approach that having obtained the approval from MOFCOM, while the first case is the acquisition of Freescale by NXP in November 2015.¹⁵

MOFCOM Initiates Investigation against Meinian Onehealth Healthcare for Failure of Notification for Concentration of Undertakings

On 26 July, Meinian Onehealth Healthcare (Group) Co., Ltd (“**Meinian**”), a subsidiary of Meinian Onehealth Healthcare Holdings Co Ltd, received an Investigation Notice of Failing

¹³<http://fdj.mofcom.gov.cn/article/jyzizjyaigs/>

¹⁴<http://fdj.mofcom.gov.cn/article/zcfb/201607/20160701353023.shtml>

¹⁵<http://fdj.mofcom.gov.cn/article/ztxx/201607/20160701369044.shtml>

to Notify Transactions (“**Investigation Notice**”) from MOFCOM’s Anti-Monopoly Bureau (“**AMB**”). The Investigation Notice shows that in November 2014, Meinian signed an Equity Transfer Agreement with the shareholders of Ciming Health Checkup Management Group (“**Ciming**”) to acquire 100% equity of Ciming. In March 2015, Meinian acquired 27.78% shares of Ciming and completed the registration. In November 2015, Shanghai Tianyi Assets Management Co., Ltd acquired 68.4% equity of Ciming and completed the registration. In April 2016, Shanghai Weitu Investment Center acquired 36.11% shares of Ciming Health Checkup from Tianyi Assets Management Co., Ltd and completed the registration. The above-mentioned transactions are suspected of failing to notify to MOFCOM in accordance with relevant laws and regulations. AMB decided to initiate an investigation into these transactions pursuant to the *Anti-Monopoly Law of the People’s Republic of China* and *Provisional Measures on Investigation and Dealing with Undertakings for Failing to Notify Concentration of Undertakings Pursuant to the Law*.¹⁶

¹⁶<http://kuaixun.stcn.com/2016/0726/12811157.shtml?sukey=3997c0719f151520fc06ac8803fffb083cc41e7ab0c1a0dd84a3ae395fa47286e6310096cdad4baf936800607deec0ba>

Academia

Training Program of Price Supervision and Antitrust Enforcement Held at CUPL

On 18 July 2016, a commencement ceremony of training program of price supervision and antitrust enforcement, jointly organized by China University of Political Science and Law (“**CUPL**”) and PSIAMB of NDRC, was held in CUPL’s Changping campus. Mr. Zhang Handong, Director-General of PSIAMB, Mr. Chen Zhijiang, Deputy Director-General of PSIAMB, Mr. Huang Jin, President of CUPL, Mr. Shi Jianzhong, Deputy President of CUPL, and Mr. Liu Shouren, Dean of CUPL’s School of Further Education, attended the ceremony. And the ceremony was hosted by Mr. Chen Zhijiang.¹⁷

International Seminar on Antitrust and IPRs Held in Shanghai

On 9 July, the International Seminar on Antitrust and IPRs was held at Shanghai Jiao Tong University (“**SJTU**”). The seminar was jointly organized by Research Center for Competition Law and Policy of SJTU, Skolkovo Institute for Law and Development of National Research University - Higher School of Economics and UCL Centre for Law, Economics and Society. More than 40 experts and scholars in antitrust and IPRs fields at home and abroad attended the seminar.¹⁸

¹⁷<http://news.cupl.edu.cn/info/1011/21886.htm>

¹⁸http://www.cssn.cn/fx/fx_tpxw/201607/t20160711_3116626.shtml

Dentons Team

Jet Deng Delivers Two Keynote Speeches in the 11th International Conference on Competition and Regulation

The 11th International Conference on Competition and Regulation was held from 30 June to 3 July 2016 in Rhodes Island, Greece. The conference topic was “Advances in the Analysis of Competition Policy and Regulation”. Representatives of law enforcement authorities from US, EU, Russia, Brazil, South Africa, etc., scholars from dozens of universities and institutes and representatives of law firms and in-house counsels attended the conference. Jet Deng, Senior Partner of Beijing Dentons Law Offices, was invited to deliver two keynote speeches as the sole representative from antitrust legal practice in China. In the discussion of “Antitrust, Regulation and Industrial Policy in BRICS: Tensions and Institutional Performance”, Jet Deng pointed out that the establishment of Fair Competition Review System is one of the crucial decisions of Chinese government to develop market economy. The system also has a significant impact on promoting the development of competition policy, restricting administrative monopoly as well as protecting the fair competition in a unified national market. During the “Recent Developments in Competition Law and Policy in BRICS” session, Jet Deng delivered a keynote speech on “One Country, Two competition Laws: The Evolution of Competition Laws in Mainland China and Hong Kong”.¹⁹

Will Zhang Delivers a Lecture on “How to Cope with a Commercial Bribery Investigation” for In-house Institute of Japanese Companies

On 28 July, Will Zhang, associate of Dentons Antitrust Team, was invited by In-house Institute of Japanese Companies to deliver a lecture on “How to Cope with a Commercial Bribery Investigation” for in-house counsels from Japanese companies and relevant lawyers. In combination with years of frontline enforcement experience, Will Zhang analyzed the topic from following aspects: the source of clue for enforcement authorities, how to find out the indication of being investigated and how to cope with the investigation properly. During the Q & A section, Will Zhang had in-depth communication with attendees and shared his insights in regard to relevant hot issues.

¹⁹<http://www.dachengnet.com/cn/news/dachengNews/78921.html?sukey=3997c0719f1515205acb269da14295ad01e0af8bd0db3066ed28f3dec5910a52a4d250db3f67e247721ae9f401293fe8>

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