

China Monthly Antitrust Update

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Contents

Legislation	3
Provincial Governments of Hebei, Liaoning, Beijing, Ningxia, Guizhou, etc. Publish Opinions on Implementing the Fair Competition Review System	3
Authorities	4
Officials from SAIC, NDRC and MOFCOM Attend 2016 China Competition Policy Forum	4
Director-General of the PSAMB of NDRC Zhang Handong Meets with Representatives of US and Canada Antitrust Enforcement Agencies	4
Officials of the AMB of MOFCOM Meet with Representatives of Singapore, US and Canada Antitrust Enforcement Agencies	5
The 13 th EU-China Competition Policy Forum Held in Haikou	5
Deputy Director-General of the AMB of MOFCOM Han Chunlin Attends 2016 Anti-Monopoly Training Program and Delivers Speech	5
PSAMB of NDRC Organizes a Fair Competition Review System Training Program	6
Wu Zhenguo Takes up the Post of Director-General of the AMB of MOFCOM	6
Deputy Director-General of SAIC Wang Jiangping Conducts Survey in Sichuan Province	6
Public Enforcement	7
CPPIA Requests an Anti-Monopoly Investigation to be Initiated by the NDRC	7
Merger Control	8
MOFCOM Releases 19 Streamlined Cases in October	8
MOFCOM Releases Unconditionally Cleared Cases in the 3rd Quarter of 2016	8
Lam Research Withdraws Merger Filing	8
Private Actions	9
Retrial of the First Anti-monopoly Case in the China's Oil System Revokes the First Instance Ruling, Finding against Plaintiff	9
The First Public Interest Litigation against Monopolistic Industry in the Consumer Area Initiates in Jiangsu	9
Guangzhou Intellectual Property Court Rules RPM Adopted by Gree Distributors Does Not Constitute Vertical Monopoly Agreement	9
Shanghai No.1 Intermediate People's Court Rules Agreements between Panasonic and Its Distributors Do Not Constitute Horizontal Monopoly Agreements	10
Academia	11
The Mega Roundtable Forum of International Antitrust Enforcement Held in Beijing	11
2016 China Competition Policy Forum Held in Beijing	11
Intellectual Property & Competition Law Institute Established at Shanghai Jiao Tong University	12
Dentons Team	13
Dentons Recognized in IFLR 2017 Financial and Corporate Guide	13
Ken Dai Attends ACA Annual Conference and Delivers Speech	13
Jet Deng Attends 2016 China Competition Policy Forum and Delivers Speech	13
Ken Dai Attends InnoXcell Asia Symposium and Delivers Speech	13

Legislation

Provincial Governments of Hebei, Liaoning, Beijing, Ningxia, Guizhou, etc. Publish Opinions on Implementing the Fair Competition Review System

On 22 September 2016, Hebei Province published the *Opinions of Hebei Provincial Government on Implementing the Fair Competition Review System in Development of Market System* to regulate government's activities in enacting policies that restrict or eliminate competition.¹ On 9 October, Liaoning Province published the *Opinions of Liaoning Provincial Government on Implementing the Fair Competition Review System in Development of Market System*, in which specific arrangements, review targets, enforcement procedures, safeguard mechanism are laid down.² On 21 October, Beijing published the *Opinions of Beijing Municipal Government on Implementing the Fair Competition Review System in Development of Market System* to regulate government's activities in enacting policies that restrict or eliminate competition.³ Ningxia⁴ and Guizhou⁵ published similar opinions recently as well. Since the State Council published the *Opinions on Establishment of Fair Competition Review System in Development of Market System* on 14 July 2016, several provinces including Jiangsu, Hunan, Hebei, Liaoning, Beijing, Ningxia, Guizhou have subsequently published their respective opinions.

¹<http://info.hebei.gov.cn/eportal/ui?pageld=1962757&articleKey=6664570&columnId=329982>

²http://www.ln.gov.cn/zfxx/zfwj/szfwj/zfwj2011_111254/201610/t20161010_2542599.html

³<http://www.bjfbz.gov.cn/html/fzb/153/content/3933.html>

⁴http://www.gov.cn/xinwen/2016-10/18/content_5120727.htm

⁵http://www.gzgov.gov.cn/xwzx/djfb/201611/t20161102_655168.html

Authorities

Officials from SAIC, NDRC and MOFCOM Attend 2016 China Competition Policy Forum

On 27 October 2016, Deputy Director-General of the State Administration for Industry and Commerce of the People's Republic of China ("**SAIC**") Wang Jiangping⁶, Director-General of Price Supervision Anti-Monopoly Bureau ("**PSAMB**") of the National Development and Reform Commission ("**NDRC**") Zhang Handong⁷ and Director-General of the Anti-Monopoly Bureau ("**AMB**") of the Ministry of Commerce ("**MOFCOM**") Wu Zhenguo⁸ attended 2016 China Competition Policy Forum and delivered speeches respectively on the topic of "Implementation of Competition Policy in Supply-side Structural Reform". In the subsequent sessions, Director-General Wu Zhenguo, Director-General of the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau ("**CEB**") of SAIC Ren Airon and Deputy Director-General Lu Wanli, Deputy Director General of the PSAMB of NDRC Li Qing, Deputy Director-General of the AMB of MOFCOM Han Chunlin participated in panel discussions on the topic of "Due procedure and transparency in the enforcement of competition policy", "Information exchange", "Differences and similarities in the inspection of merger filing of cross-border acquisitions in different legal systems".

Director-General of the PSAMB of NDRC Zhang Handong Meets with Representatives of US and Canada Antitrust Enforcement Agencies

In the morning of 27 October 2016, Director-General of the PSAMB of NDRC Zhang Handong met with Acting Assistant Attorney General of the United States Department of Justice ("**DOJ**"), Director-General of the Antitrust Division of DOJ Renata Hesse, and commissioner of the Federal Trade Commission ("**FTC**") Maureen Ohlaussen and their teams.⁹ Director General Zhang Handong also met with Senior Deputy Commissioner of the Canadian Competition Bureau Jeanne Pratt and her team in the afternoon.¹⁰ Both sides

⁶http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201611/t20161102_172030.html

⁷http://jjs.ndrc.gov.cn/gzdt/201610/t20161027_824346.html

⁸<http://fldj.mofcom.gov.cn/article/xxfb/201611/20161101564812.shtml>

⁹http://www.ndrc.gov.cn/fzgggz/jgidyfld/jjszhdt/201610/t20161027_824350.html

¹⁰http://jjs.ndrc.gov.cn/gzdt/201610/t20161027_824340.html

introduced their latest progress in competition policy and anti-monopoly enforcement, and exchanged opinions on fair competition review system, anti-monopoly guidelines and cooperation in law enforcement.

Officials of the AMB of MOFCOM Meet with Representatives of Singapore, US and Canada Antitrust Enforcement Agencies

On 26 October, Director-General of AMB of MOFCOM Wu Zhenguo met with FTC Commissioner Maureen Ohlaussen, Director of the International Exchange Office of the Antitrust Division of DOJ Lynda Marshall.¹¹ Deputy Director-General Han Chunlin met with Senior Deputy Commissioner of the Canada's Competition Bureau ("**CCB**") Jeanne Pratt.¹² On 31 October, Wu Zhenguo met with Chief Executive of Competition Commission of Singapore ("**CCS**") Toh Han Li.¹³ Both sides exchanged opinions on anti-monopoly law enforcement in concentration of undertakings, cooperation of law enforcement, etc.

The 13th EU-China Competition Policy Forum Held in Haikou

From October 24th to 27th, the 13th EU-China Competition Policy Forum was held in Haikou, Hainan Province. Officials of the PSAMB of NDRC, the AMB of MOFCOM and the CEB of SAIC as well as officials of European Commission, Germany and Italy competition authorities attended the forum. Officials and executive staffs of anti-monopoly enforcement agencies in the industry and commerce system from 25 provinces, autonomous regions and province-level municipalities attended as well. This year's topics include "Analysis of Competition Effect of Laws and Regulations", "Competition Law in Automobile Industry", "Bilateral Market", and "Horizontal Cooperation Agreement", etc.¹⁴

Deputy Director-General of the AMB of MOFCOM Han Chunlin Attends 2016 Anti-Monopoly Training Program and Delivers Speech

From October 20th to 21th, a training program jointly organized by Office of State Council's Anti-Monopoly Commission ("**AMC**"), Policy and Regulation Bureau of State-Owned Assets Supervision and Administration Commission and Legal Division of All China Federation of Industry and Commerce was held in Beijing. Deputy Director-General of the AMB of

¹¹<http://fldj.mofcom.gov.cn/article/xxfb/201610/20161001489876.shtml>

¹²<http://fldj.mofcom.gov.cn/article/xxfb/201610/20161001489871.shtml>

¹³<http://fldj.mofcom.gov.cn/article/xxfb/201610/20161001542545.shtml>

¹⁴http://jjs.ndrc.gov.cn/qzdt/201610/t20161027_824337.html

MOFCOM Han Chunlin attended the commencement ceremony and delivered a speech. Near one hundred representatives from state-owned enterprises, private enterprises and industry associations attended the training program.¹⁵

PSAMB of NDRC Organizes a Fair Competition Review System Training Program

On 9 October, the PSAMB of NDRC organized a fair competition review system training program in Beijing. Director-General Zhan Handong attended the program and made arrangements for future work plan. Deputy Director-General Li Qing hosted the training program. Officials from 47 price supervision and anti-monopoly agencies attended the program, exchanged information regarding the latest progress in enforcing the system and proposed suggestions for the future work. Officials of the PSAMB of NDRC introduced the contents and enforcement progress of the fair competition review system.¹⁶

Wu Zhenguo Takes up the Post of Director-General of the AMB of MOFCOM

According to MOFCOM's press release on 30 September, then Deputy Director-General Wu Zhenguo was promoted to Director-General of the AMB of MOFCOM. Wu is originally from Yantai, Shandong Province, graduated from Shandong University with a Ph.D. in Law. He has worked in the erstwhile Ministry of Textile Industry and State Economic and Trade Commission. He has also served in the Department of Treaty and Law of MOFCOM. Since August 2016 Wu has served as Deputy Director-General of the AMB of MOFCOM and director of the AMC of the State Council.¹⁷

Deputy Director-General of SAIC Wang Jiangping Conducts Survey in Sichuan Province

On 30 September, Deputy Director-General of SAIC Wang Jiangping conducted survey regarding public utilities in Sichuan Province. Wang was briefed by Sichuan Administration of Industry and Commerce ("AIC") of its work progress. Deyang and Dazhou AICs reported to Wang of their special enforcement action against public utilities' monopolistic activities. Since August, China AICs have investigated more than 900 cases, closed 300, with a total value of more than CNY 100 million involved.¹⁸

¹⁵ <http://fldj.mofcom.gov.cn/article/xxfb/201610/20161001478211.shtml>

¹⁶ http://jjs.ndrc.gov.cn/gzdt/201610/t20161011_822198.html

¹⁷ <http://fldj.mofcom.gov.cn/article/gywm/201102/20110207406162.shtml>

¹⁸ http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201610/t20161012_171613.html

Public Enforcement

CPPIA Requests an Anti-Monopoly Investigation to be Initiated by the NDRC

On 24 October 2016, China Plastics Processing Industry Association (“**CPPIA**”) requested an anti-monopoly investigation to be initiated by the NDRC due to irregular fluctuation in the price of toluene diisocyanate (“**TDI**”), a raw material for sponge production. According to the request, the price of TDI has been fluctuating between CNY 12,000 to 17,000 per ton for the past three years. However, since October the price of TDI has been raised to CNY 48,000 to 50,000 per ton, with an increase rate of nearly 400%.¹⁹

¹⁹http://www.ssipi.com.cn/news_content.aspx?nt=24&nid=HYTU20161025091206814078&n

Merger Control

MOFCOM Releases 19 Streamlined Cases in October

Up to 31 October 2016, MOFCOM has released 19 streamlined cases in October on its website, with a total amount reaching 543 so far.²⁰

MOFCOM Releases Unconditionally Cleared Cases in the 3rd Quarter of 2016

On 10 October, MOFCOM released on its website a list of unconditionally cleared cases in the third quarter of 2016, which includes 85 cases in total.²¹

Lam Research Withdraws Merger Filing

On 5 October, Lam Research Corporation (“**Lam Research**”) declared that it has terminated the proposed acquisition of KLA-Tencor Corporation (“**KLA-Tencor**”) and subsequently withdrew the merger filing at MOFCOM on 8 October. Earlier MOFCOM received the notification of this transaction on 23 December 2015 and initiated the inspection of the transaction on 21 April 2016. By 2015 Lam Research and KLA-Tencor were the second and fifth largest manufacturer of semiconductors. The proposed acquisition would have created the world’s largest semiconductors manufacturer. During the review, MOFCOM discovered that the proposed transaction could result in restriction or exclusion of competition and therefore issued such concerns to the parties to demand remedies. In its inspection MOFCOM cooperated closely with antitrust agencies of US and South Korea and exchanged information on competition concerns and work progress on a number of occasions.²²

²⁰ <http://fldj.mofcom.gov.cn/article/jyzizjyajs/>

²¹ <http://fldj.mofcom.gov.cn/article/zcfb/201610/20161001405824.shtml>

²² <http://fldj.mofcom.gov.cn/article/zcfb/201610/20161001405824.shtml>

Private Actions

Retrial of the First Anti-monopoly Case in the China's Oil System Revokes the First Instance Ruling, Finding against Plaintiff

On 8 October 2016, Kunming Intermediate People's Court has rejected private company Yunnan Yingding Bio-energy's refusal-to-deal lawsuit against Sinopec Sales Co and its Yunnan branch. This is the first anti-monopoly case in China's oil system.²³

The First Public Interest Litigation against Monopolistic Industry in the Consumer Area Initiates in Jiangsu

On 12 September, Jiangsu Consumer Association brought a case against Nanjing Water Service Group Co Ltd. for unreasonably high liquidated damage stipulated in the water service standard clause. This is the first public interest litigation against monopolistic industry in the consumer area and the first public interest litigation in Jiangsu Province. On 19 September, the complaint was accepted by Nanjing Intermediate People's Court.²⁴

Guangzhou Intellectual Property Court Rules RPM Adopted by Gree Distributors Does Not Constitute Vertical Monopoly Agreement

On 30 August, Guangzhou Intellectual Property Court reached a first instance decision in dismissing the lawsuit filed by a retailer of Gree electrical appliances, Dongguan Hengli Guochang Electrical Appliance Store ("**Hengli**"), against a wholesaler, Dongguan Shengshi Xinxing Gree Trading Ltd. ("**Shengshi**") and a general distributor of the Gree brand of air conditioners, Dongguan Heshi Electrical Appliance ("**Heshi**"), alleging vertical monopoly agreements. The court ruled that although plaintiff's three-party agreement ("**agreement**") with the two defendants together with other evidence proved that Shengshi had adopted resale price maintenance ("**RPM**"), setting the minimum price of plaintiff's resale of the Gree air conditioners, the agreement does not constitute vertical monopoly agreement stipulated under China's Anti-Monopoly Law ("**AML**") and Shengshi's conducts do not constitute

²³<http://www.chinanews.com/cj/2016/10-31/8048889.shtml>

²⁴<http://www.cicn.com.cn/zqgsb/2016-10/20/cms91819article.shtml>

monopolistic activities according to the definition under the AML.²⁵

Shanghai No.1 Intermediate People's Court Rules Agreements between Panasonic and Its Distributors Do Not Constitute Horizontal Monopoly Agreements

On 29 June, Shanghai No.1 Intermediate People's Court reached its decision in dismissing the plaintiff, Rijing Electric's allegation that Panasonic and its two Chinese distributors, Shanghai Qingying Automation Equipment ("**Qingying**") and Wenzhou Mingda Automation System ("**Mingda**"), had violated 13(3) of the AML,²⁶ finding Qingying and Mingda are distributors in the same brand and therefore do not qualify as the implementing subjects of horizontal monopoly agreement under Art.13 of the AML.

²⁵<http://wenshu.court.gov.cn/content/content?DocID=f9d94f5a-c0b9-4720-8789-a7f50cf3eb9a&KeyWord=%25E6%25A0%25BC%25E5%258A%259B%7C%25E5%259E%2584%25E6%2596%25AD>

²⁶http://www.a-court.gov.cn/platformData/infoplat/pub/no1court_2802/cpws_32416/preview_nw.jsp?paper_code=21&orig_year=2014&orig_sort=2105111&orig_no=120&latws=21

Academia

The Mega Roundtable Forum of International Antitrust Enforcement Held in Beijing

On 28 October 2016, the Mega Roundtable Forum of International Antitrust Enforcement was held during the second day of the 5th China Competition Policy Forum. The forum was hosted by professor Huangyong from University of International Business and Economics (“UIBE”). Director-General of the CEB of SAIC Ren Airong, Deputy Director-General of the AMB of MOFCOM Han Chunlin, Deputy Director-General of the PSAMB of NDRC Li Qing, Acting Assistant Attorney General of DOJ Renata Hesse, FTC Commissioner Renata Hesse, Director of Directorate E of EU Directorate General for Competition Paul Csiszar, commissioner of Japan Fair Trade Committee (“JFTC”) Takashi Yamamoto, Chief Assistant Executive of CCS Lee Cheow Han, Senior Commissioner of CCB Jeanne Pratt and Hongkong SAR Competition Commission Hu Hongyu attended the forum. The topics included “Competition Policy and Fair Competition Review System”, “Latest Development and Characteristic of Competition Enforcement”, etc.

2016 China Competition Policy Forum Held in Beijing

From 27 to 28 October, 2016 China Competition Policy Forum, hosted by Expert Advisory Committee of State Council’s AMC, organized by Competition Law Center of UIBE, was held in Beijing. This year’s theme was “Implementation of Competition Policy in Supply-side Structural Reform”. More than 400 representatives of competition law enforcement agencies, courts, universities, academic institutions, enterprises, law firms and medias from home and abroad attended the forum, covering a wide range of topics including “Due Process and Transparency in the Implementation of Competition Policy”, “Competition Policy’s Application in the Internet Industry”, “Information Exchange”, “Differences and Similarities in the Inspection of Merger Filing of Cross-border Acquisitions in Different Legal Systems”, “SEPs and Antitrust”, “Economic Analysis in Antitrust Enforcement”, “Discussion on Policies and Practices in Competition and Innovation”, “Communication System between Law Firms, Enterprises and Enforcement Agencies & Enterprises’ Antitrust Compliance”, “Education of Competition law professionals” and “Mega Roundtable Forum of International Antitrust Enforcement” (see above).

Intellectual Property & Competition Law Institute Established at Shanghai Jiao Tong University

The first Shanghai Scientific Innovation and Legal Forum & Commencement Ceremony of the Intellectual Property & Competition Law Institute was held on 16 October. The forum was focused on “Rule of Law Safeguarding the Construction of Global Scientific Innovation Center”. Nearly 200 scholars from academic, practice and industry field attended the forum and discussed reform and future arrangements regarding Shanghai’s construction of global scientific innovation center as well as the legal issues in this process.²⁷

²⁷<http://news.sjtu.edu.cn/info/1021/1179022.htm>

Dentons Team

Dentons Recognized in IFLR 2017 Financial and Corporate Guide

IFLR 1000 recently released its 2017 Financial and Corporate Guide. Dentons China Antitrust Team has been recognized as “Notable Law Firm” for two consecutive years. Senior partner Jet Deng was also recognized as one of the “Leading Lawyers” in competition law.

Ken Dai Attends ACA Annual Conference and Delivers Speech

On 29 October, Asia Competition Association 2016 Annual Conference was held in Cheju, South Korea. Competition law officials and legal experts from China, South Korea, Japan and Singapore attended the conference. In the “Trend of Cartel Regulation” session, Ken Dai, co-chair of Dentons China Antitrust Team, introduced practices in China and pointed out the future trend of cartel regulation combined with his experience in participating in the cartel investigation.

Jet Deng Attends 2016 China Competition Policy Forum and Delivers Speech

In the evening of 27 October, 2016 China Competition Policy Forum entered into the “Competition Policy & Law Salon” session. The salon was held by professor Huangyong from UIBE. Deputy Director-General of the PSAMB of NDRC Li Qing, Deputy Director-General of the CEB of SAIC Lu Wanli attended the salon to discuss the topic of “Communication System between Law Firms, Enterprises and Enforcement Agencies & Enterprises’ Antitrust Compliance” with scholars, lawyers and representatives of enterprises. Together with fellow members of antitrust practices, Jet Deng, co-chair of Dentons China Antitrust Team, shared his view on the issue of communication and pointed out that an effective communication system should reflect the professional characteristics of antitrust and China’s inherent framework and practices of administrative investigation.

Ken Dai Attends InnoXcell Asia Symposium and Delivers Speech

On 25 October, InnoXcell Asia Symposium (Beijing) was commenced. Various professionals from enterprises, law firms and law enforcement agencies attended the symposium, discussing a wide range of topics including compliance program, due diligence investigation, white-collar crime, antitrust investigation and law enforcement, data

protection, etc. Ken Dai attended the symposium, hosted and joined the discussion of “Antitrust Investigation and Law Enforcement”. Combined with his knowledge of China’s AML and his experience as an antitrust lawyer, Dai introduced to the audience issues including the leniency program under China’s AML system, individual liability, compliance program, collection of evidence during the investigation and international law enforcement. On 27 October, Ken also attended the InnoXcell Asia Symposium (Shanghai).

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