

China Competition Bulletin

The China Competition Bulletin summarises the latest developments of competition and regulatory policy in the People's Republic of China, covering laws and policies, cases, agency and other relevant news, and selected publications.

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Highlights

The Ministry of Commerce (MOFCOM) issued 3 merger decisions in the past 2 months, one of which was a prohibition. MOFCOM prohibited the P3 shipping alliance among Maersk, Mediterranean Shipping, and CMA CGM. This is only the second merger prohibited by MOFCOM since the Anti-Monopoly Law (AML) came into effect nearly 6 years ago. It also imposed behavioural conditions on Merck's acquisition of AZ Electronics and on the joint venture involving Japanese and Chinese companies for the production of nickel-metal hydride (NiMH) batteries. Further, MOFCOM released revised guiding opinions on merger notifications, which provide more guidance on the merger notification process and related concepts. The National Development and Reform Commission (NDRC) fined a number of lens manufacturers for resale price maintenance. It also suspended its year-long investigation into InterDigital after InterDigital made commitments. The long-awaited draft regulation on the application of the AML to the abuse of intellectual property rights (IPRs) was recently released by the State Administration for Industry and Commerce (SAIC) for public comment. The State Council also issued a number of policy documents relating to economic and market reform, including a plan to promote mergers in the Chinese dairy industry.

1. Laws and Policies

1. MOFCOM Releases Revised Guiding Opinions on Merger Notifications

On 6 June 2014, MOFCOM released its revised *Guiding Opinions on the Notification of Concentrations Between Business Operators* (关于经营者集中申报的指导意见) to replace those originally released in January 2009. Unlike the guiding opinions released in 2009, which only contained 12 clauses, the new guiding opinions include 30 clauses.

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The revised guiding opinions are generally consistent with, and at times replicate, the AML and a number of implementing regulations. Importantly, they provide guidance on “control”, a concept that was not previously defined or clarified by the AML or the implementing regulations. Article 3 not only states that “control” includes sole and joint control, legal and de facto control, and indirect and direct control, it also provides a number of legal and factual circumstances that MOFCOM will take into account when determining control. In relation to joint ventures, Article 4 states that a newly established joint venture will constitute a concentration if there are at least 2 business operators having joint control over the joint venture, whereas if only one business operator has control over the joint venture, the joint venture established is not a concentration.

The guiding opinions also provide further details on the notification process. Articles 9 to 12 provide information on MOFCOM’s pre-notification consultation process. Pre-notification consultation is not compulsory. If the parties decide to consult with MOFCOM, they must provide MOFCOM with certain information, such as a transaction overview and a list of the proposed issues for consultation. Importantly, MOFCOM requires that the transaction subject to the consultation be real and relatively definitive, and that the proposed issues for consultation be directly relevant to a concentration that is about to be or has been notified.

Other areas where more guidance is provided include the calculation of turnover (Articles 5 to 8), situations where a notification may be withdrawn (Article 19), and notification materials (Articles 20 to 21).

Source: <http://fldj.mofcom.gov.cn/article/xgxz/201406/20140600614679.shtml>

2. SAIC Releases Draft Regulation for the Abuse of Intellectual Property Rights for Public Consultation

On 11 June 2014, the SAIC released the *Regulation of the Administrations for Industry and Commerce on the Prohibition of Abuse of Intellectual Property Rights to Eliminate or Restrict Competition (Consultation Draft)* (工商行政管理机关禁止滥用知识产权排除、限制竞争行为的规定 (征求意见稿)) for public consultation. An explanatory note that outlines the drafting process and provides further explanation on the draft was also released. The deadline for comments was 10 July 2014.

The SAIC has been preparing the draft regulation since 2009. In particular, it has undergone several rounds of consultation with third parties. Consulted parties include the administrations for industry and commerce at the provincial and local levels, departments under the State Council that are related to anti-monopoly or IPR work, foreign and domestic knowledge-intensive businesses (such as China Telecom, Huawei, Qualcomm, and Samsung), foreign chambers of commerce, foreign competition law authorities, and academics and other experts in competition law.

The draft regulation provides guidance on the application of Article 55 of the AML, which states that the AML does not apply to exercises of IPRs pursuant to intellectual property laws and regulations but does apply to the abuse of IPRs eliminating or restricting competition. The SAIC recognises that the AML and IPR protection share the common objectives of promoting innovation and competition, increasing efficiency, and safeguarding consumer interests and the public interest. It points out in Article 3 that market definition should take into account the impact of factors such as IPRs and innovation. In particular, the relevant product market in IPR licensing may be a technology market or a product market with specific IPRs. Article 6 also expressly recognises that the ownership of an IPR is just one of the factors to consider when determining whether a business operator is dominant.

Whilst the draft regulation prohibits the conclusion of anti-competitive agreements in the course of exercising IPRs, Article 5 establishes safe harbor rules. A horizontal agreement will be presumed to not be a monopoly agreement in breach of Article 13 if the combined market share of the competitors in the affected relevant market is not more than 20% or there are at least 4 substitutable technologies obtainable at reasonable costs in the relevant market. Similarly, a vertical agreement will be presumed to not be a monopoly agreement in breach of Article 14 if neither party has a market share of more than 30% or there are at least 2 substitutable technologies obtainable at reasonable costs in the relevant market. Such presumptions can be rebutted by evidence that proves that the agreement has the effect of eliminating or restricting competition.

The draft regulation also addresses specific conduct that the SAIC regards as being relatively common in practice. Such conduct includes refusals to license IPRs which constitute an essential facility, exclusive dealing, bundling, imposing unreasonably restrictive conditions, and discriminatory treatment. In particular, the SAIC recognised that the refusal to license IPRs is a very sensitive issue. The SAIC also considers abusive conduct in the context of patent pools, standard formulation and implementation, collective copyright management organisations, and the initiation of legal proceedings.

Article 17 sets out the steps that may be taken by the SAIC when considering whether an exercise of IPR eliminates or restricts competition. It will determine the nature and manner that the IPR has been exercised, the nature of the relationship between the business operators exercising the IPR, define the relevant market, determine the market position of the business operator exercising the IPR, and analyse the impact of the exercise of the IPR on competition. The list of factors considered by the SAIC in its competition assessment is set out in Article 18.

Source: http://www.saic.gov.cn/gzhd/zqyj/201406/t20140610_145803.html

2. Cases

1. MOFCOM Conditionally Approves Merck's Acquisition of AZ Electronic Materials

MOFCOM conditionally approved Merck's acquisition of AZ Electronic Materials on 30 April 2014. Merck is a chemical and pharmaceutical company, and AZ Electronics produces specialty chemicals materials for electronic products. MOFCOM's review period went into phase 2, lasting 91 days in total.

Competition assessment

The relevant product markets were found to be liquid crystal and photoresist. MOFCOM considered that the relevant geographic market was global but examined the impact of the acquisition on the Chinese market.

MOFCOM found that the acquisition would give Merck the ability to bundle sales of liquid crystal and photoresist or engage in cross-subsidisation, thereby harming competition. Post-acquisition, Merck would become the largest supplier of liquid crystal and photoresist and the only company that supplies both products. If Merck were to bundle sales of liquid crystal and photoresist, it could reduce the price of the products through cross-subsidisation, increasing sales and profits.

Second, MOFCOM held that competitors would be unable to exert sufficient competitive pressure on the merged entity due to their low market shares and volume and inability to offer a similar bundle of products. MOFCOM believed that this may result in the marginalisation or exit of competitors from the market. This in turn would reduce choice for customers, weaken their bargaining power, and make it more difficult for them to resist unilateral price increases.

Third, MOFCOM said that there were high barriers to entry. Merck holds more than 3,500 patents in the liquid crystal market, and it is difficult for competitors and entrants to break through in the short term. Further, customers require that photoresist suppliers go through a technical certification process that lasts 2 to 3 years, and in practice, customers would not change to a supplier that has no sales record.

Remedies

MOFCOM imposed behavioural remedies to address its concerns that the acquisition could restrict competition in the liquid crystal and photoresist markets. In particular, it required Merck:

- not to bundle the sale of or cross-subsidise liquid crystal and photoresist products or otherwise directly or indirectly force Chinese customers to purchase the products together
- when licensing its liquid crystal patents, to do so non-exclusive and non-sublicensable terms, which are governed by commercially reasonable and non-discriminatory principles

Merck must report on its compliance with the commitments every 6 months. It must also notify MOFCOM prior to entering into any liquid crystal patent licensing agreements in China. The commitments are effective for 3 years, i.e. until 30 April 2017.

The acquisition was also approved by the antitrust authorities in Germany, Japan, Taiwan, and the United States.

Source: <http://fldj.mofcom.gov.cn/article/ztxx/201404/20140400569060.shtml>

2. MOFCOM Prohibits the Formation of the P3 Network Shipping Alliance Among Maersk, Mediterranean Shipping, and CMA CGM

MOFCOM prohibited the formation of the P3 Network shipping alliance among Maersk, Mediterranean Shipping, and CMA CGM on 17 June 2014. It found that the establishment of the P3 Network might have the effect of eliminating or restricting competition in the market for container liner shipping services across the Asia-Europe shipping route. MOFCOM's review took the maximum 180 days, in addition to having a pre-filing period of 3 months. It also engaged an independent third party to conduct legal and economic analysis of the competition issues involved in the concentration.

This is only the second time that MOFCOM has prohibited a transaction since the AML came into effect, with the first prohibited transaction being the *Coca-Cola/Huiyuan* transaction in March 2009.

Competition assessment

MOFCOM found that the relevant product market was the international container liner shipping services, and that the Asia-Europe, Trans-Pacific, and Trans-Atlantic shipping routes (also known as the East-West shipping routes) were the relevant geographic markets. However, MOFCOM only focused on the Asia-Europe and Trans-Pacific shipping routes, as they cover Chinese ports. Further, MOFCOM focused its review on the market for container liner shipping services on the Asia-Europe route, as it found that the Trans-Pacific route market was fragmented with a number of competitors with high market shares.

MOFCOM found that the P3 Network would result in the close joint cooperation of the parties and be substantially different to traditional shipping alliances. It recognised that shipping companies commonly cooperate with each other to a certain extent and form shipping alliances. Traditionally, such shipping alliances involve vessel sharing agreements and capacity swap agreements, and there is only a loose degree of cooperation as alliance members operate independently. However, MOFCOM found that the parties, through the P3 Network, would consolidate all their shipping capacity in the global East-West shipping routes and that the P3 Network would more tightly manage and centralise operations. MOFCOM also held that the shipping alliance would significantly strengthen the parties' ability to control the market due to consolidated capacity, change the market structure by significantly increasing market concentration, increase the already high barriers to entry, suppress competitors' room for development, increase the parties' bargaining power vis-à-vis ports, and harm the interests of cargo owners.

MOFCOM found that the transaction would result in the parties' close joint cooperation and this may have the effect of eliminating or restricting competition in international container liner shipping services on the Asia-Europe shipping route.

The parties submitted several rounds of proposed commitments to address MOFCOM's concerns. However, MOFCOM believed that the proposed commitments lacked legal basis and convincing evidentiary support and did not resolve its concerns. No detail was provided on the proposed remedies put forward by the parties. The MOFCOM decision also stated that the parties failed to prove that the transaction would result in competitive benefits that significantly outweigh its adverse effects, or that it is in line with the public interest. MOFCOM did not elaborate or explain what types of benefits were put forward by the parties and why they were insufficient to outweigh the potential anti-competitive effects.

MOFCOM's decision to prohibit the shipping alliance stands in contrast to the views taken by the US and European authorities on the same transaction. The US Federal Maritime Commission (FMC) decided that the alliance would not result in unreasonable increases in transportation costs through a reduction in competition. The FMC, unlike MOFCOM, took into account the parties' argument that the alliance would result in operational efficiencies and benefit consumers. Similarly, the European Commission (EC) decided not to open competition proceedings against the alliance. Nonetheless, the FMC required the implementation of a monitoring program, and the EC also stated that it would continue to monitor P3's activities to ensure compliance with EU competition law.

Source: <http://fldj.mofcom.gov.cn/article/ztxx/201406/20140600628586.shtml>

3. MOFCOM Conditionally Approves NiMH Battery Joint Venture

On 2 July 2014, MOFCOM announced the conditional approval of a joint venture for the mass production of NiMH batteries for electric and hybrid cars. The joint venture will be called Corun PEVE (China) Automotive Battery Co and jointly owned by Toyota China (5%), Toyota Tsusho (4%), Primearth EV Energy (PEVE, 41%), Hunan Corun New Energy (40%), and Changshu Sinogy Venture Capital (10%). MOFCOM's review went into phase 2 and took 120 days.

Competition assessment

The concentration involves two relevant markets, the global NiMH car battery market and the Chinese hybrid car market.

MOFCOM found that the concentration would weaken competition in the global NiMH car battery market. It held that this market is highly concentrated, with PEVE, Panasonic, Corun, and Johnson Controls accounting for 97% of the market. PEVE is majority owned by Toyota, and Panasonic also has a 19.5% ownership interest. The proposed joint venture would weaken the willingness to compete among PEVE, Panasonic, and Corun as they would have common interests. There are also high technical barriers to entry to the market, involving significant research and development and construction costs, meaning that entry in the short term is difficult.

MOFCOM also argued that the concentration would have an adverse effect on the Chinese hybrid car market, where Toyota China was found to have an 80.3% share. Upstream, PEVE has a 66.4% market share in the global NiMH car battery market. Against this background, MOFCOM held that the concentration strengthens Toyota's control over the hybrid car industry supply chain. According to the joint venture agreement, the joint venture would have supplied Toyota China on a preferential basis. In particular, if the joint venture wished to supply any other party, the board must approve. Toyota (which includes Toyota China and PEVE) can veto such proposals and can therefore ensure that the joint venture supplies only Toyota China. This means that it would have been difficult for other current and future hybrid car manufacturers to source high quality batteries.

Therefore, MOFCOM found that the joint venture would weaken competition in the NiMH car battery market and prevent downstream hybrid car manufacturers from being supplied NiMH car batteries, potentially eliminating or restricting competition in the NiMH car battery and hybrid car markets.

Remedies

To address MOFCOM's concerns, the joint venture and the parties agreed that:

- the joint venture will supply third parties on a fair, reasonable, and non-discriminatory basis
- if there is market demand, the joint venture will supply third parties within 3 years of commission

The joint venture is required to provide an annual written report to MOFCOM on its compliance with the above obligations and to formulate an implementation plan, which needs to be approved by MOFCOM. MOFCOM will monitor compliance with these obligations, either itself or through a supervisory trustee.

Source: <http://fldj.mofcom.gov.cn/article/ztxx/201407/20140700648291.shtml>

4. MOFCOM's Unconditional Merger Clearance Decisions in the Second Quarter of 2014

On 4 July 2014, MOFCOM released the list of 68 merger cases that it unconditionally cleared in the second quarter of 2014.

Source: <http://fldj.mofcom.gov.cn/article/zcfb/201407/20140700650711.shtml>

5. MOFCOM Begins Publishing Public Notices for Simple Cases

From 22 May 2014, MOFCOM began publishing public notices for mergers classified as “simple cases” on its website for public consultation. The public consultation period is 10 days.

Sources:

<http://fldj.mofcom.gov.cn/article/jyzjzjyaigs/>

<http://www.mofcom.gov.cn/article/ae/ai/201405/20140500598547.shtml>

6. NDRC Fines Lens Manufacturers for Vertical Price Fixing

On 29 May 2014, the NDRC announced that it had imposed an aggregate fine in excess of RMB 19 million on a number of lens manufacturers for resale price maintenance. It investigated a number of well-known glass lens (Essilor, Nikon, Carl Zeiss, and Hoya) and contact lens (Johnson & Johnson, Bausch & Lomb, and Shanghai Weicon Optical) manufacturers. NDRC's local offices in Beijing, Shanghai, and Guangzhou were responsible for conducting the investigation, which began in August 2013.

According to the NDRC, the lens manufacturers had engaged in various types of resale price maintenance conduct. This included signing contracts with retailers containing clauses that restricted resale prices and required retailers to adhere to the recommended retail price, and holding “buy 3 get 1 free” promotional activities with national or major city retailers. The lens manufacturers also implemented sanctions and restrictions to ensure compliance with the set prices, discounts, and promotional activities. These measures included deducting bond moneys, cancelling sales rebates, imposing fines, stopping supply, and giving warnings.

The NDRC found that the parties implemented price monopoly agreements in violation of Article 14 of the AML. It noted that the parties have begun to adopt corrective measures by immediately stopping the illegal conduct, amending their contracts to comply with the AML, organising AML compliance training, and reducing the ex-factory prices of their main products.

Essilor and Nikon were fined 2% of last year's revenue (RMB 8.7902 million and RMB 1.6848 million respectively) and a fine of 1% of last year's revenue was imposed on Carl Zeiss (RMB 1.766 million), Bausch & Lomb (RMB 3.69 million), and Johnson & Johnson (RMB 3.6437 million). Both Hoya and Shanghai Weicon Optical were exempt from penalties as they reported the anti-competitive conduct and provided important evidence to the NDRC.

It is believed that this AML investigation is part of a big push for international, well-known eyeglass manufacturers to reduce their prices.

Source: http://www.ndrc.gov.cn/gzdt/201405/t20140529_613562.html

7. NDRC Suspends Its Investigation Into InterDigital

On 22 May 2014, the NDRC announced the suspension of its investigation into InterDigital for potentially breaching the AML. InterDigital was suspected of abusing its dominant position in the wireless communications standard essential patents (SEPs) market and engaging in anti-competitive conduct. Such conduct included charging unfairly high licensing fees from Chinese businesses, requesting that Chinese businesses license their patents to InterDigital for free, and tying the licensing of non-SEPs to SEP licenses.

The NDRC began its investigation in June 2013, and representatives from InterDigital met with the NDRC in July 2013 and January 2014. The NDRC noted that InterDigital had actively cooperated with the investigation, reached a settlement agreement with Huawei, the purported complainant, with respect to patent licensing, and agreed to enter patent licensing negotiations with Huawei and other Chinese companies.

In March 2014, InterDigital submitted an application to suspend the investigation and offered commitments to eliminate the effects of the alleged anti-competitive conduct. These measures include not charging Chinese businesses discriminatory and high licensing fees, not bundling the licensing of non-SEPs with SEPs licenses, not requiring that Chinese businesses license their patents for free to InterDigital, and not forcing Chinese companies to accept unreasonable licensing conditions via litigation. The NDRC found that the commitments could eliminate the effects of the alleged anti-competitive conduct, ensure that Chinese businesses could fairly compete, and restore the market competition order. The NDRC continues to monitor InterDigital's compliance with the commitments.

Source: http://www.ndrc.gov.cn/xwzx/xwfb/201405/t20140522_612465.html

8. SAIC Suspends Its Investigation Into Beijing Shankai Sports International

On 3 June 2014, the SAIC announced that it suspended its abuse of dominance investigation into the conduct of Beijing Shankai Sports International following the company's commitments.

Shankai Sports International is the exclusive hospitality package sales agent for the 2014 FIFA World Cup in Greater China. The FIFA hospitality packages included premium seating, parking, catering, and gifts. Shankai bundled other services into the hospitality packages, including accommodation, local transportation, and travel services. However, Shankai did not inform customers that the hospitality packages could be purchased separately.

Shankai Sports International proposed a number of commitments, effective already during the World Cup period, to rectify the conduct and its effects. It committed to promoting the 2014 FIFA World Cup tickets sales policy through advertising, providing refunds to customers who had purchased hospitality packages but no longer wanted the bundled services, making it clear that two separate hospitality packages (the FIFA hospitality package and a separate bundled package) are being offered for sale, and providing legal compliance training to staff.

The SAIC accepted the commitments and required Shankai Sports International to provide written reports on its compliance with the commitments on 20 June 2014 and 13 July 2014. The Tianjin Administration for Industry and Commerce is responsible for monitoring compliance with the commitments.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201406/t20140611_145914.html

9. Quanzhou AIC Investigating Alleged Bundling of Set-Top Boxes and Smart Cards

On 13 June 2014, the Quanzhou Municipal Government in Fujian Province affirmed the decision by the Quanzhou Administration for Industry and Commerce to fine Fujian Network Group's Quanzhou affiliate (Quanzhou B&T) for bundling the sale of set-top boxes and smart cards, thereby restricting competition. Quanzhou B&T appealed the original decision through the administrative law process called "administrative reconsideration", but lost its appeal.

Consumers complained that Quanzhou B&T had provided smart cards that functioned well only with set-top boxes provided by Quanzhou B&T. If the numbers of the set-top box did not match with the corresponding smart card, the cable television service would not function properly.

During the administrative reconsideration process, Quanzhou B&T claimed that pairing set-top boxes with smart cards was due to technology limitations and therefore the conduct should be exempted from punishment. However, the Quanzhou Municipal Government did not accept this argument and stated that such conduct ruled out fair competition and harmed consumer welfare.

Sources:

http://www.saic.gov.cn/jgzf/fldyfbzljz/201405/t20140521_145293.html

<http://www.sarft.net/a/166737.aspx>

3. News of Anti-Monopoly Enforcement Agencies and the Courts

1. Update on MOFCOM's Activities

During May and June 2014, Shang Ming, the Director-General of the MOFCOM Anti-Monopoly Bureau, met with the Chairman of the Australian Competition and Consumer Commission, the Chairwoman of the US Federal Trade Commission, the Deputy Assistant Attorney General of the US Department of Justice, and the Chairman of the Competition Authority of Kenya. MOFCOM signed a memorandum of understanding with each of the Australian and Kenyan competition authorities.

Separately, the Deputy Director-General of the MOFCOM Anti-Monopoly Bureau led a delegation to attend the 2014 Bilateral Meeting on Competition Policy held in Seoul, South Korea.

MOFCOM also confirmed that proposed acquisition of Hundsun (a Chinese company that supplies financial software and network services and one of the biggest IT providers for traditional financial institutions) by Zhejiang Rongxin Network Technology (controlled by Jack Ma, although Alibaba is not its shareholder) is currently undergoing anti-monopoly review. MOFCOM's review began on 4 June. If the merger goes through, it will help Alibaba be an influential player in the provision of electronic financial services.

Sources:

<http://fldj.mofcom.gov.cn/article/xxfb/201405/20140500597184.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201405/20140500594220.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201406/20140600626481.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201406/20140600627482.shtml>

<http://www.mofcom.gov.cn/article/ae/ah/diaocd/201406/20140600628061.shtml>

2. MOFCOM Sends Out Surveys to Investigate Regional Blockades and Industry Monopolies

MOFCOM began sending out surveys in May 2014 to various businesses and parties, such as the China Automobile Dealers Association and its members, to assist with its investigation into regional blockades and industry monopolies. The survey consists of 7 questions, including whether there are any discriminatory charges, rates, or prices for non-local businesses and whether non-local businesses have encountered abuses of administrative monopoly by local governments.

According to MOFCOM, the main purpose of this survey is to collect comments and suggestions of the participants on the potential work plan to eliminate regional blockades and industry monopolies and on maintaining a unified, fair, and competitive market.

Sources:

<http://tjtb.mofcom.gov.cn/article/y/shangwxw/201405/20140500606304.shtml>

<http://shfw.mofcom.gov.cn/article/shdt/201405/20140500591397.shtml>

3. Update on the NDRC's Activities

The NDRC Price Supervision and Anti-Monopoly Bureau signed a cooperation agreement with Renmin University on AML-related matters. Under the agreement, the NDRC can request that Renmin University conduct research and specialised training, and it will provide opportunities to students at Renmin University to conduct research. Renmin University can select young academics to participate in price supervision and AML work and invite NDRC leaders and experts to give lectures. The NDRC and Renmin University will also work together on the magazine "Price Supervision and Anti-Monopoly in China".

Separately, Qualcomm continues to cooperate with the NDRC in the abuse of dominance investigation. A number of Qualcomm executives visited the NDRC's offices to answer questions and meet with Xu Kunlin, Director of the NDRC of Price Supervision and Anti-Monopoly Bureau.

In addition, a delegation from the NDRC visited South Korea in May 2014 to discuss competition policy matters. Following that trip, the NDRC and the Korea Fair Trade Commission held a competition policy dialogue in Beijing on 26 June 2014.

It has been reported that the NDRC has asked the Jiangsu Price Bureau to investigate certain pharmaceutical companies for engaging in suspected anti-competitive conduct. The investigation reportedly involves 9 companies across Jiangsu, Anhui, Shanghai, Zhejiang, Hebei, and Liaoning provinces. It is understood that this investigation is the first to be conducted by a provincial price bureau that involves cross-provincial conduct.

Sources:

http://jjs.ndrc.gov.cn/gzdt/201407/t20140703_617675.html

http://jjs.ndrc.gov.cn/gzdt/201405/t20140509_611111.html

http://jjs.ndrc.gov.cn/gzdt/201406/t20140627_616753.html

http://finance.cnr.cn/gundong/201405/t20140513_515498143.shtml

http://jsfzb.xhby.net/html/2014-04/25/content_996776.htm

4. Update on the SAIC's Activities

The SAIC held its Fourth Anti-Monopoly and Anti-Unfair Competition Expert Training Session on 16 May 2014. Vice Minister Sun Hongzhi emphasised that the participants needed to improve their ability to learn, research, innovate, and solve problems.

Source: http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201405/t20140508_144951.html

5. Beijing First Intermediate People's Court Announces the Top 10 Representative Unfair Competition Cases in the Internet Industry

The Beijing First Intermediate People's Court recently released a list of its top 10 representative unfair competition cases in the Internet industry. The cases cover registering someone else's well-known brand name as a domain name without consent, installing inappropriate and conflicting software on the same product, changing other people's webpages without consent, ranking algorithms, inducing and preventing users from using similar products, control over the use of vertical search technology, commercial slander, and the infringement of Internet service protocols. A number of these cases involve Qihoo and Baidu, either as opposing parties in the same cases or in proceedings involving other parties.

Source: http://www.sipo.gov.cn/mtjj/2014/201406/t20140625_971003.html

6. Plan to Establish Intellectual Property Courts Recently Adopted

On 6 June 2014, the Central Leading Small Group for Comprehensively Deepening Reform adopted a plan to establish intellectual property courts. Its chairman, Xi Jinping, emphasised that the fundamental and institutional measures of judicial system reform are to improve judicial personnel classification management, improve judicial accountability, improve job security for judicial personnel, promote the unified management of human resources of the people's courts and people's procuratorates at the local (below province) levels, and establish intellectual property courts.

Source: http://www.sipo.gov.cn/yw/2014/201406/t20140611_963710.html

7. AML-Related Conferences

A number of AML related conferences were held in Beijing during May to June 2014. Such conferences included:

- 16 May: the 19th "Peking University Competition Law Seminar" held by Peking University Competition Law Research Centre
- 21 to 23 May: the "Antitrust in Asia: China" conference jointly organised by the Expert Advisory Group of the Anti-Monopoly Commission of the State Council and the American Bar Association Section of Antitrust Law
- 24 to 25 May: "2014 Antitrust Civil Litigation Forum" organised by the University of International Business and Economics
- 24 May: "Global IT Industry Restructuring Trends and Regulations to Address Them in China and Korea—Anti-Monopoly and IPR as Central" conference jointly organised by the China-Korea Market and Regulation Law Center (established by Renmin University and Korea University) and Shanghai Jiaotong University
- 26 June: "EU-China Consumer Protection Seminar" held by the SAIC and the European Commission Directorate-General for Health and Consumers

Sources:

http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201406/t20140630_146321.html

<http://www.uibesz.org/news/shownews.php?lang=cn&id=127>

<http://epaper.legaldaily.com.cn/fzrb/content/20140526/Article06009GN.htm>

<http://theory.people.com.cn/n/2014/0522/c148980-25051066.html>

4. Central and Local Government News

1. MIIT Releases Notice on Working Better to Optimise the Market Environment for Mergers, Acquisitions, and Reorganisations

On 30 May 2014, the Ministry of Industry and Information Technology (MIIT) issued a notice on the measures to be adopted by local industry and information technology departments to optimise the market environment for mergers, acquisitions, and reorganisations. Local industry and information technology departments are required to:

- improve communication and coordination with other relevant departments and implement State policies such as finance, taxation, land, and employee settlement
- take into account local realities to formulate specific plans, improve the relevant administrative examination and approval system, increase local financial and taxation support, properly use land compensation fees, make reasonable arrangements for industrial land, and do better at placing staff and providing a stable workforce
- leverage industrial policies to provide good guidance and service and create a sound environment for mergers and acquisitions
- promote cross-regional mergers and acquisitions
- clean up market segregation and regional blockades and other restrictions and repeal and cancel the practices and unreasonable provisions that hinder fair competition and are unfavorable to the cross-regional mergers and acquisitions
- actively promote cross-municipal or cross-prefecture mergers and acquisitions and support local businesses to do undertake such transactions
- report major issues to the MIIT in a timely manner

Source: <http://www.miit.gov.cn/n11293472/n11293832/n12843926/n13917012/16014204.html>

2. State Council Outlines the Key Tasks for Deepening Economic System Reform

On 30 April 2014, the State Council issued some opinions on the key tasks for deepening economic system reform. According to the State Council, the government should:

- accelerate the transformation of government functions, further streamline policies, and delegate powers to lower authorities
- promote fiscal and financial price reform and aim to establish a modern financial system to better serve the real economy and undertake social development
- construct an open economic system through deepening reform and promote domestic reform and system innovation to a deeper level through opening up
- promote the orderly flow of factors, efficient resource allocation, in-depth market integration, and industrial transformation and upgrading
- construct a commercial environment that complies with international investment and trading rules and allows fair competition of both domestic and foreign-invested enterprises
- accelerate the development of new international competitive advantages

Source: http://www.gov.cn/zhengce/content/2014-05/20/content_8818.htm

3. State Council Announces Proposal to Promote Mergers in the Dairy Industry

On 6 June 2014, the State Council approved a program jointly proposed by several ministries (including the MIIT and the NDRC) to promote mergers and acquisitions among Chinese dairy companies. The program applies to dairy companies registered in China that produce infant formula. A package of policy benefits are included in this program, including all-level tax waiver, simplified administrative procedures, and increased financial support. The industry is reportedly quite positive about this program, with many voices strongly believing that efficient mergers can save and boost Chinese dairy industry.

This proposal comes against the backdrop of record high fines imposed by the NDRC on 6 foreign infant formula producers less than one year earlier.

Sources:

http://www.gov.cn/zhengce/content/2014-06/13/content_8877.htm

http://www.gov.cn/xinwen/2014-06/24/content_2707024.htm

4. State Council Issues Opinions on Promoting Fair Market Competition to Maintain Normal Market Order

On 4 June 2014, the State Council released its opinions on promoting fair market competition to maintain normal market order. The State Council highlighted the importance of the market and free competition in determining resource allocation. It also stated that the government must not directly intervene in market competition when not necessary and that essential supervision and regulation must be carefully conducted within the rule of law. Administrative decentralisation was also mentioned as one of the basic principles.

Source: http://www.gov.cn/zhengce/content/2014-07/08/content_8926.htm

5. News of State-Owned Enterprises

1. Shanghai Completes Enterprise Classification Work

It is reported that enterprise classification work, which is the key step in Shanghai's state-owned asset reforms, has been completed. More than 50 state-owned enterprises are under the direct supervision and administration of the Shanghai Municipal State-owned Assets Supervision and Administration Commission, and have been classified as follows:

- 67% are competition-oriented enterprises. These are market-oriented enterprises that pursue maximum economic benefits and social benefits and work hard to become the most energetic and influential enterprises in their industries both at home and abroad
- 4 enterprises are public service enterprises. The main objectives of public service enterprises are to ensure the normal operation and stability of cities, realise social benefits, and introduce social evaluation
- the remaining 10+ enterprises are functional enterprises. These enterprises aim to accomplish strategic and major special tasks and pursue economic benefits

It is also understood that the Shanghai government will release the *Several Opinions on the Promotion of Shanghai State-Owned Enterprises to Actively Develop a Mixed Ownership Economy (Trial)* (关于推进本市国有企业积极发展混合所有制经济的若干意见（试行）) soon. Under these guidelines, competition-oriented enterprises (but not public service or functional enterprises) will be required to actively promote mixed ownership reform.

Source: <http://jrj.cnstock.com/yw/201407/3081629.htm>

6. Other News/Media Comments

1. **ZTE Submitted Antitrust Complaints Against Vringo**

On 20 June 2014, Chinese telecommunications company ZTE Corporation filed an antitrust complaint against Vringo Inc., an American company that manages patents, to the EC. ZTE requested that the EC investigate the licensing practices of Vringo that may have infringed fair competition requirements. It has been suggested that one of the main reasons that ZTE filed this complaint against Vringo is to respond to Vringo's filing of lawsuits against ZTE in various regions.

Source: http://news.xinhuanet.com/info/2014-06/20/c_133422688.htm

Major Acronyms

AML	Anti-Monopoly Law 2007, PRC
MOFCOM	Ministry of Commerce, PRC (MOFCOM is one of China's three competition enforcement agencies which applies the AML and is responsible for enforcing the merger control regime under the AML)
NDRC	National Development and Reform Commission, PRC (NDRC is one of China's three competition enforcement agencies which applies the AML and is responsible for enforcing price-related infringements of the AML in the areas of restrictive agreements and abuse of dominant market position)
SAIC	State Administration for Industry and Commerce, PRC (SAIC is one of China's three competition enforcement agencies which applies the AML and is responsible for enforcing non price-related infringements of the AML in the areas of restrictive agreements and abuse of dominant market position)
PRC	People's Republic of China

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