

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.

中国竞争简报

A publication of the Competition
Law and Economics Network at
Melbourne Law School,
University of Melbourne

Edition 42: May/June 2016

Highlights

The National Development and Reform Commission (NDRC) has released the drafts of 2 antitrust guidelines—1 on exemption for anticompetitive agreements and 1 on determining illegal gains and fines—for public comment. The drafts of all 6 antitrust guidelines have now been publicly released for stakeholder input.

The Ministry of Commerce (MOFCOM) has released Wal-Mart from the commitments it made relating to its 2012 acquisition of Yihaodian. The MOFCOM has also fined companies for failure to notify their transactions for antitrust merger review.

The local bureaus of the State Administration for Industry and Commerce (SAIC) in Shandong and Inner Mongolia have both taken action to punish companies for abuse of dominance by imposing unreasonable trading conditions in violation of the *Anti-Monopoly Law* (AML). A revenue re-allocation arrangement between accounting firms in Shandong was also detected and the firms were fined.

The fair competition review system has now been established in China. From July 2016 onwards, State Council departments and provincial-level governments and their departments will be required to undergo fair competition review when formulating relevant policies and measures.

1. Laws and Policies

1. State Council releases opinion on establishing a fair competition review system

On 14 June 2016, the State Council released the *Opinion on the Establishment of the Fair Competition Review System in the Development of a Market System*, which sets out the reasons for and requirements of the fair competition review system. The fair competition review system is aimed at preventing excessive and inappropriate government intervention in the market and addressing the problem of “administrative monopoly,” a term used to indicate anticompetitive actions by government bodies. The fair competition review system will

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come into effect from July 2016 onwards, when State Council departments and provincial-level governments and their departments are required to undertake fair competition reviews when formulating relevant policies and measures. The NDRC, the State Council Legislative Affairs Office, the MOFCOM, and the SAIC will guide and promote the implementation of the fair competition review system.

Measures subject to review

Any rule, normative document, and other policy measure relating to the economic activities of market participants (such as market access, industrial development, investment, tenders and bidding, government procurement, business conduct, and quality standards) formulated by a policymaking body is required to undergo a fair competition assessment. A policymaking body is an administrative organisation or other organisation authorised by law or regulation to administer public affairs. A fair competition assessment should also be conducted during the drafting of administrative regulations and other policies and measures formulated by the State Council and local regulations.

Method of review

The fair competition review system relies on self-assessment by policymaking bodies. Only policy measures that have undergone the review and been found not to have the effect of eliminating or restricting competition can be implemented. Measures that are found to have an anticompetitive effect must not be adopted, or adopted only after appropriate adjustments have been made to satisfy the review standards. Policy measures that have not gone through fair competition review must not be adopted. The views of interested parties or the public should also be solicited, and the adopted policy measure must be made publicly available.

Review standard

Overall, the review must be taken with the view to protecting the national unified market and fair competition. The opinion sets out 18 review criteria grouped into 4 main categories, being market entry and exit, free movement of goods and production factors, effect on production and operating costs, and effect on production and operating behaviour.

Exceptions

An anticompetitive policy measure may still be implemented if it protects national economic security or cultural security or is related to the building up of national defence; achieves poverty alleviation and development, disaster relief or other social security purpose; achieves energy conservation, environmental protection, or other social and public interests; or relates to other circumstances prescribed by law or administrative regulation. Policymakers are required to conduct annual assessments of the effects of implementing such policy measures. Once the policy measure expires or stops achieving the desired effect, its implementation must be stopped or it must be adjusted appropriately.

Sources: http://www.gov.cn/zhengce/content/2016-06/14/content_5082066.htm

http://jjs.ndrc.gov.cn/gzdt/201606/t20160615_807275.html

2. Draft antitrust guideline on determining illegal gains from anticompetitive conduct and setting fines released for public consultation

On 17 June 2016, the NDRC released the *Guideline on the Determination of Illegal Gains from Monopolistic Conduct by Business Operators and the Setting of Fines (Consultation Draft)* for public consultation. The consultation period ended on 6 July 2016.

The draft guideline provides an analytical framework and basic methodology for a competition authority to determine illegal gains and set fines involving anticompetitive agreements or abuse of dominance cases. Overall, the illegal gains and fines must reflect the facts, nature, and circumstances of the illegal conduct, the degree of social harm, and the principles of proportionate punishment, education, and deterrence.

Determining illegal gains

Under normal circumstances, the competition authority will confiscate illegal gains from the business's activities within China. If the activities take place outside China, the competition authority can still confiscate the illegal gains generated from the activities involving the Chinese market.

Competition authorities will usually consider changes to price, volume, market share, and profit margin that result from the anticompetitive conduct and industry characteristics as a whole when determining the quantum of illegal gains. Economic analysis might also be used, if necessary. The draft guideline sets out the calculation methodology to be used in cases where the illegal gains are in the form of additional income, reduced expenses, or a combination of both. In each case, the actual income and expenses will be compared to the income and expenses that would have been earned or incurred had the anticompetitive conduct not taken place. The draft guideline also sets out the situations where a competition authority may find that there is no illegal gain or where illegal gains may not be confiscated.

Setting fine amounts

The amount of the fine to be imposed will be calculated by multiplying the business's sales in the previous year by a penalty rate that will reflect the nature, degree, and duration of the illegal conduct and other factors in the *Administrative Penalties Law* and other laws and regulations. Three steps are taken to calculate the fine amount:

1. Determine the sales in the previous year (the accounting year before the initiation of the investigation, or where the illegal conduct has ceased prior to the initiation of the investigation, the accounting year before the illegal conduct was stopped)
2. Determine the base penalty rate, which reflects the nature and duration of the illegal conduct
 - *Nature of the illegal conduct*: the base penalty rate is 3% for price fixing, output restriction, or market sharing agreements, 2% for other horizontal anticompetitive agreements, and 1% for resale price maintenance. For abuse of dominance conduct, the base penalty rate is 3% where the dominant market position arises by virtue of relevant laws and administrative regulations. If that dominant market position is obtained through competition, the base penalty rate is 2%
 - *Duration of the illegal conduct*: taking 1 year as the base, the base penalty rate will be increased by 1% for each additional year. For additional periods less than 1 year, the base penalty rate will be increase by 0.5% for up to 6 months and 1% for between 6 months but less than 1 year
3. Adjust the penalty rate, taking into account other aggravating, mitigating, or reduction factors and the seriousness of the illegal conduct

The final penalty rate, which must be between 1–10%, must be at least 6% where the harm to competition and consumer interests is high and no more than 3% where such harm is minimal.

Source: http://jjs.ndrc.gov.cn/fjgld/201606/t20160617_807541.html

3. Draft antitrust guideline on exemption of monopoly agreements released for consultation

The NDRC released the *Guideline on the General Conditions and Procedures for Exemption of Monopolistic Agreements (Consultation Draft)* for public consultation on 12 May 2016. The consultation period ended on 1 June 2016. The NDRC received nearly 200 comments and recommendations from 62 organisations and individuals on this draft guideline.

Pursuant to Article 15 of the AML, anticompetitive agreements entered into for certain objectives may be exempt from Articles 13 and 14 of the AML (the provisions prohibiting certain horizontal and vertical agreements). The draft guideline sets out 2 main ways that parties can obtain assurance that an anticompetitive agreement is exempt. Parties may make either an exemption “application” to, or request an exemption “consultation” with, the competition authority in question.

Exemption application

Parties can make an exemption application at any time after an investigation is initiated but before a decision is made by the competition authority. In other words, companies can use the exemption application as a sort of defence argument that the agreement under investigation in fact fulfilled the criteria in Article 15 of the AML.

An application must include information such as the agreement and any relevant documents, the reasons for the exemption application and relevant evidence, and written supporting materials demonstrating that the agreement complies with Article 15 of the AML.

The competition authority will assess an exemption application against 3 matters. It will consider whether the agreement falls within the conditions for exemption, substantially restricts competition, and engenders benefits that are passed on to consumers. Under this procedure, the competition authority may consult with relevant businesses, consumers, government departments, industry associations, community groups, and experts. Where social and public interests are involved, the competition authority may put the application to public consultation. The draft guideline also covers circumstances where an exemption granted may be reviewed or withdrawn.

Exemption consultation

Parties proposing to enter an agreement may request a consultation with a competition authority on the issue of exemption even before the agreement is formalised. However, the competition authority will only accept such requests in exceptional circumstances.

Exemption requests may be accepted only in two circumstances: (1) where the agreement will have an impact on competition in several countries or regions (including China) and the parties intend to apply for exemption in those other countries or regions or (2) where a national industry association requests the consultation on behalf of the entire industry for an agreement that is extensive and significant. Further, the proposed agreement for which consultation is sought must be sufficiently certain, not the subject of a pending case, and not already be clearly provided for in existing competition laws, administrative regulations, rules, guidelines, final administrative decisions, judicial interpretations, or court decisions. The consultation question must also be a specific question relating to whether the agreement satisfies a certain exemption condition.

The competition authority will issue an opinion in response to the consultation question. That opinion, which will be based only on the materials submitted by the applicant, will outline the competition authority's competition concerns, provide suggestions for addressing those concerns, and may note whether or not an exemption application may be granted. It also clearly provides that the opinion does not prevent the competition authority from initiating an investigation after the agreement is implemented.

Sources: http://jjs.ndrc.gov.cn/fjgld/201605/t20160512_801559.html

http://jjs.ndrc.gov.cn/fjgld/201606/t20160613_807005.html

2. Cases

1. MOFCOM fines companies for failing to notify transactions for antitrust review

On 4 May 2016, the MOFCOM released 3 decisions in which it sanctioned various companies for failure to notify their transactions for antitrust review. The decisions were all made on 21 April 2016. In each case, the MOFCOM determined that the transaction constituted a concentration under Article 20 of the AML and had reached the notification thresholds. Therefore, the parties in each case had breached Article 21 of the AML by not notifying their transaction to the MOFCOM for antitrust review. That said, after its investigations, the MOFCOM found that each transaction would not eliminate or restrict competition in the relevant market.

Dade Holdings' acquisition of 50% of Jilin Sichang Pharmaceutical

In July 2011, Dade Holdings signed an agreement to acquire a 50% equity interest in Jilin Sichang Pharmaceutical. The acquisition was carried out in 2 steps, with the transfer of 19% equity in November 2011 and the remaining 31% equity in January 2015. The MOFCOM imposed a fine of RMB 150,000 on Dade Holdings, taking into account the fact that Dade Holdings had subsequently voluntarily filed the acquisition with the MOFCOM for antitrust review.

Joint venture between New United Group and Bombardier Transportation Sweden

New United Group and Bombardier Transportation Sweden signed an agreement to establish a 50/50 joint venture on 5 February 2015. The joint venture obtained its business license on 11 June. New United Group was fined RMB 300,000, whereas Bombardier Transportation Sweden was fined RMB 400,000 because this was the second time that the group was fined for violating Article 21 of the AML. When making its decision, the MOFCOM took into account the fact that the parties had intentionally decided not to file the joint venture for antitrust review because they wished to participate in a rail project tender.

Joint venture between Beijing CNR and Hitachi

Beijing CNR, a state-owned enterprise (SOE), and Hitachi were each fined RMB 150,000 in relation to the establishment of their joint venture. Beijing CNR, Hitachi, and Hitachi China signed an agreement to establish a 51/39/10 joint venture on 15 March 2013, and the joint venture obtained its business license on 28 March 2014. In determining the fine, the MOFCOM took into account the parties' voluntary subsequent notification of the joint venture for antitrust review and cooperation with the investigation.

Sources: <http://fldj.mofcom.gov.cn/article/ztxx/201605/20160501311079.shtml>

<http://fldj.mofcom.gov.cn/article/ztxx/201605/20160501311081.shtml>

<http://fldj.mofcom.gov.cn/article/ztxx/201605/20160501311092.shtml>

2. MOFCOM releases Wal-Mart from commitments relating to the company's 2012 acquisition of Yihaodian

On 30 May 2016, the MOFCOM decided to release Wal-Mart from the conditions that it had imposed on Wal-Mart's acquisition of Yihaodian in 2012. Wal-Mart had applied for release from these conditions in July 2015.

When the MOFCOM conditionally approved Wal-Mart's acquisition in 2012, the authority was concerned that Wal-Mart would leverage its competitive advantage in the physical retail market to the online retail and the value-added telecommunications services (VATS) markets. To address these concerns, the MOFCOM limited the acquisition to that part of the online platform engaged in direct sales, prevented the use of the online platform to supply online services to other parties without first being granted a VATS license, and prevented Wal-Mart from engaging in Yihaodian's VATS business through a variable interest entity.

In granting Wal-Mart's application to be released from these 2012 conditions, the MOFCOM found that the relevant market had undergone significant change. Barriers to entry into the VATS market had decreased, especially since 2014 and as a result of policy and regulatory changes that favoured increased competition in the VATS markets. China's online retail market had expanded quickly and the main competitors had grown substantially and increased their market influence and competitiveness, resulting in a much more competitive market environment. The MOFCOM also found that, since the 2012 acquisition, Yihaodian's sales growth rate had slowed down, it had no material market share increase, and it had gradually lost its competitive advantage. As such, the MOFCOM concluded that releasing Wal-Mart from the 2012 conditions would unlikely have an anticompetitive effect in the relevant market.

Source: <http://fldj.mofcom.gov.cn/article/ztxx/201606/20160601335200.shtml>

3. Shandong AIC fines accounting firms in Linyi for implementing a revenue re-allocation arrangement

On 21 March 2016, the Shandong Administration for Industry and Commerce (AIC) sanctioned 23 of the 25 accounting firms in Linyi involved in a revenue re-allocation arrangement for market sharing. The administrative decisions were released by the SAIC on 17 May 2016.

In early 2014, the Shandong AIC received reports that the accounting firms had formed the Linyi Certified Public Accountants Industry Self Discipline Commission and entered into a series of agreements. Some of those agreements were suspected to be anticompetitive. The Shandong AIC formally initiated an investigation on 3 September 2014 after receiving authorisation from the SAIC to investigate this matter on 19 August 2014.

The Shandong AIC found that, under these agreements, the accounting firms were required to, on a monthly basis, pay all the revenue they generated in Linyi into certain bank accounts. These amounts would then re-allocated to the accounting firms according to 6 factors: (1) historical revenue, being each firm's share of the total revenue in 2011, 2012, and first 4 months of 2013; (2) current revenue; (3) the number of certified public accountants in 2012; (4) 2013 revenue targets; (5) average allocation factor; and (6) common expenses. Each accounting firm would receive between 92–105% of its revenue after this re-allocation. The agreements also provided for a reward and punishment fund.

In their defence, the accounting firms argued that they did not divide the market. Further, even if there was illegal conduct, the circumstances were minor, they voluntarily stopped the conduct, and there were no harmful consequences.

In response to these arguments, the Shandong AIC determined that, throughout the duration of the agreement, those accounting firms that had increased their market share were effectively forced to part with a portion of their revenue to subsidise those accounting firms that had lost market share. This directly deprived them of the fruits of their labor, restricted their competitive vitality, and dampened their competitive vigour. It was also not conducive to the healthy development of the Linyi market economy as it prevented the competition mechanism from working properly to enable the survival of the fittest. Although the accounting firms had voluntarily stopped the illegal conduct, the conduct lasted for more than 1 year (from December 2012 to May 2013). Further, the accounting firms did not meet the requirements under the *Administrative Penalties Law* for a lighter penalty because the conduct impacted the revenues of the relevant businesses and the market order.

The Shandong AIC found that the accounting firms had reached and implemented a market sharing arrangement in breach of Article 13(1)(3) of the AML. They were ordered to stop the illegal conduct and fined a total of close to RMB 2 million. Seven accounting firms were fined 3% of their 2013 revenue because they had organised the formulation of the agreements, another 7 firms were fined only 1% of their 2013 revenue because they had opposed the agreements before they were reached, and the remaining 9 firms were fined 2% of their 2013 revenue. The Shandong AIC also took into account the fact that the accounting firms had cooperated with the investigation, voluntarily stopped the illegal conduct, and made no illegal gains.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/201605/t20160517_168642.html

4. Monopoly gas supplier in Qingdao punished for abusing its dominance for imposing unreasonable trading conditions

On 21 March 2016, the Shandong AIC sanctioned Qingdao Xinao Xincheng Gas (Qingdao Xinao) for abuse of dominance as the company was found to have imposed unreasonable conditions on the supply of gas. Qingdao Xinao was the monopoly gas supplier in the Chengyang District of Qingdao by virtue of local regulations that restricted the number of gas suppliers in the district. The Shandong AIC received a report from its bureau in Qingdao in July 2014 on a number of consumer complaints about Qingdao Xinao's conduct, and it formally initiated an investigation on 29 September 2014.

The Shandong AIC found that industrial and commercial users in the Chengyang District used 2 types of gas meters, the smart IC card meter and the ordinary gas meter. Smart IC card meter users were required to prepay for gas by loading the IC card with credit, whereas users of ordinary gas meters were invoiced monthly on a post-paid basis. From 16 April 2010, Qingdao Xinao unilaterally required industrial and commercial gas users to make a prepayment equal to 50% of their estimated gas usage next month, and users that did not make this prepayment would effectively have their gas supply terminated. This prepayment could not be applied towards users' gas usage charges and would be returned only upon termination of gas supply. Qingdao Xinao collected nearly RMB 9 million from 209 industrial and commercial gas users in prepayments. These amounts were refunded to the users on 18 March 2015 following an order of the Shandong AIC.

In its defence, Qingdao Xinao argued that it faced liquidity pressure because it had to make prepayments to its upstream gas suppliers. It also argued that it needed to mitigate the risk that industrial and commercial gas users would deliberately delay paying their accounts and that the users had agreed to make the prepayments. These arguments were all rejected by the Shandong AIC. The Shandong AIC also found that the conduct infringed the legitimate interests of consumers and the public interest, harmed fair competition, and was not conducive to the normal development of the gas industry and the healthy development of the market economy.

Qingdao Xinao was found to have imposed unreasonable conditions without justification by requiring users make the prepayment in breach of Article 17(1)(5) of the AML and Article 6(4) of the *SAIC Regulation on the Prohibition of Abuse of Dominance Conduct*. The Shandong AIC ordered Qingdao Xinao to stop the illegal conduct, confiscated its illegal gains of around RMB 52,000, and imposed a fine of around RMB 6.8 million (3% of 2013 sales in the relevant market). As Qingdao Xinao had taken the initiative to eliminate the harmful consequences of its conduct, it satisfied the conditions for lighter sanctions under the *Administrative Penalties Law*.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201605/t20160517_168617.html

5. Water supply company in Inner Mongolia fined for abuse of dominance for imposing unreasonable trading conditions

On 22 April 2016, the Inner Mongolia AIC issued its decision to sanction the Alxa Zuoqi Water Supply and Drainage Company (Alxa Zuoqi) for abuse of dominance. The decision was published by the SAIC on 31 May 2016.

The Inner Mongolia AIC began an antitrust investigation on 24 July 2015. After determining that the relevant market was the supply of urban public water services in the Alxa Zuoqi Bayanhaote area, it found that Alxa Zuoqi had a dominant position in the relevant market. Alxa Zuoqi had been the sole supplier in the relevant market since May 1979 and, due to its nature as a natural monopoly, there was no substitute for urban water supply and water users relied completely on Alxa Zuoqi. It was also difficult for competitors to enter the market due to strict legal requirements, the need to access the water supply network and related infrastructure, and limited water sources. Potential entrants would also need to cooperate with Alxa Zuoqi, as its parent company was the owner of the water supply network in the relevant market.

The Inner Mongolia AIC found that Alxa Zuoqi had imposed 2 unreasonable conditions on its supply of water. First, since May 2013, Alxa Zuoqi had required that users wishing to install or change their water meter continue using the water meter supplied by Alxa Zuoqi. Second, users seeking to connect to the urban public water supply network must use the construction services provided by Alxa Zuoqi. In both cases, if the users did not use the water meters or construction services provided by Alxa Zuoqi, the user would not be supplied with water, and Alxa Zuoqi's meter and construction service prices were much higher than the market prices for similar goods and services.

In its defence, Alxa Zuoqi argued that measurement errors in water meters had led to a low ratio between the water actually supplied and the water sold, and that it faced commercial pressure as the cost of supplying water was high and water prices were relatively low. The Inner Mongolia AIC rejected these arguments and

found that Alxa Zuoqi had no justifiable reason for imposing the conditions in question. Alxa Zuoqi had deprived consumers of choice by requiring users to install designated water meters, and commercial pressure could not be a justifiable reason to force users to install its water meters and use its construction services and have no legal basis.

The Inner Mongolia AIC found that Alxa Zuoqi's conduct had adversely impacted fair competition. It had harmed their competitors in the water meter production and sales and water supply and drainage construction services markets and destroyed the fair competition order. It also harmed the legitimate interests of its trading counterparts and increased the burden of consumers and businesses.

Alxa Zuoqi was found to have breached Article 17(1)(5) of the AML. It was ordered to stop its illegal conduct, had its illegal gains of around RMB 300,000 confiscated, and fined around RMB 450,000 (2% of the preceding year's sales). The company satisfied the conditions for lighter sanctions as it cooperated with the investigation, understood that it had violated the law, and adopted corrective measures.

Source: http://www.saic.gov.cn/zwgk/gggs/jzjf/cfjd/201605/t20160531_168925.html

6. Television provider in Xilin Gol in Inner Mongolia punished for illegal tying

On 7 June 2016, the Inner Mongolia AIC found that the Xilin Gol branch of the Inner Mongolia Radio and Television Network Group (Xilin Gol Radio and Television) had violated Article 17(1)(5) of the AML. Xilin Gol Radio and Television was ordered to stop its illegal conduct, had its illegal gains of RMB 91,600 confiscated, and was fined RMB 98,000 (1% of previous year's sales). The decision was released on 28 June 2016.

In October 2015, the Inner Mongolia AIC's local bureau in Xilin Gol found, during its market inspection activities, that Xilin Gol Radio and Television had engaged in tying. The Inner Mongolia AIC formally initiated an antitrust investigation after receiving authorisation from the SAIC.

The relevant market was defined as cable and Internet Protocol television (IPTV) television services delivered in Xilinhot in Xilin Gol. The Inner Mongolia AIC found that Xilin Gol Radio and Television had a dominant position in the relevant market. There are 2 main service providers in the relevant market. Xilin Gol Radio and Television began services in March 2001 and had a market share of 98.6%, whereas its competitor, who only entered the market in early 2015, had a market share of 1.4%. Xilin Gol Radio and Television had a significant degree of control in the relevant market and market entry was difficult, as potential entrants must obtain relevant licenses and approvals.

The Inner Mongolia AIC found that, since March 2015, Xilin Gol Radio and Television relied on its dominant position to force customers to purchase an optional viewing package in addition to the standard viewing package. Xilin Gol Radio and Television did so without informing or warning its customers. When customers raised objections, Xilin Gol Radio and Television used excuses to stall, refuse, or delay the handling of the issue. This conduct was contrary to the relevant local regulations and their customers' wishes and had deprived customers of their right to choose, harmed the legitimate interests of consumers, and destroyed the market competition order. The authority held that this conduct was unjustified.

The Inner Mongolia AIC concluded that Xilin Gol Radio and Television had violated Article 17(1)(5) of the AML. During the course of the investigation, Xilin Gol Radio and Television admitted that it had imposed unreasonable conditions and stopped this conduct in October 2015. In determining the sanctions, the Inner Mongolia AIC took into account Xilin Gol Radio and Television's cooperation with the investigation, recognition of its problems, and voluntary termination of its conduct.

Source: http://www.saic.gov.cn/zwgk/gggs/jzjf/cfjd/201606/t20160628_169404.html

7. Shanghai appeal court affirms 2 “ad block” judgements finding breaches of the AUCL

The Shanghai Intellectual Property Court has upheld 2 first-instance decisions related to the use of “ad block” software in breach of the *Anti-Unfair Competition Law* (AUCL). Both cases involved iQiyi, an online video platform in China, and software developed by the defendants to block or skip advertisements.

In the first case, *iQiyi v Juwangshi*, the court upheld the decision on 3 main issues. First, VST, the video aggregation software developed by Juwangshi, had decrypted iQiyi’s security key codes and was therefore able to display iQiyi’s videos without advertisements. Second, the blocking or skipping of the advertisements that played before iQiyi’s videos was the result of Juwangshi’s technical measures, and this constituted unfair competition conduct. Third, the amount of compensation determined in the first trial was appropriate and reflected the loss that iQiyi had suffered.

Similarly, in the second case, *iQiyi v Zhencai*, the court found that Zhencai’s conduct (taking technical measures to skip the advertisements that played before iQiyi’s videos) had amounted to unfair competition in breach of the AUCL. The court also evaluated the damages obligations imposed on Zhencai at first instance, and found them to be appropriate.

Sources: <http://wenshu.court.gov.cn/content/content?DocID=a700eaa5-079a-47cc-b3c4-e18195d79531&KeyWord=%E7%88%B1%E5%A5%87%E8%89%BA>

<http://wenshu.court.gov.cn/content/content?DocID=1f12c6df-4189-484a-95fb-33f861e05b71&KeyWord=%E7%88%B1%E5%A5%87%E8%89%BA>

8. Baidu’s unauthorised use of third-party information from review website found to be in breach of the AUCL by Shanghai court

On 26 May 2016, the People’s Court in Shanghai Pudong New Area found in favor of Hantao in the company’s unfair competition lawsuit with Baidu.

Dianping.com is a website owned by Hantao that collects local merchants’ information and attracts consumers to post reviews. Baidu was found to have inappropriately taken consumer reviews from dianping.com and presented them in Baidu Map and Baidu Zhidao without Hantao’s permission.

The court decided that the unauthorised use of consumer reviews from dianping.com had violated the AUCL, having considered 3 main points. First, Hantao and Baidu both provided consumers with location based services and online-to-offline services and were therefore competitors. Second, Hantao suffered a loss because Baidu presented the consumer reviews it had taken from dianping.com as their own. Third, Baidu’s conduct was not legitimate because: (1) the consumer reviews had commercial value; (2) Hantao had invested a significant amount of time and effort to accumulate consumer reviews on dianping.com; (3) Hantao’s collection, holding, and use of consumer reviews did not violate any laws or commercial ethics; and (4) Baidu had taken the consumer reviews from dianping.com using technical measures and had essentially replaced the services of dianping.com, thereby causing damage to Hantao. The court also indicated that providing only a section of a limited number of consumer reviews with links to dianping.com would not constitute unfair competition.

Source: <http://www.chinacourt.org/article/detail/2016/05/id/1885442.shtml>

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

1. MOFCOM releases list of unconditionally cleared mergers for the second quarter of 2016

On 5 July 2016, the MOFCOM released a list of 94 mergers that it unconditionally cleared in the second quarter of 2016.

Source: <http://fldj.mofcom.gov.cn/article/zcfb/201607/20160701353023.shtml>

2. Update on the MOFCOM's Activities

On 5 May 2016, the Deputy Director-General of the MOFCOM Anti-Monopoly Bureau, Han Chunlin, met with Anna Wu, Chairperson of the Hong Kong Competition Commission, to discuss competition enforcement and cooperation. Deputy Director-General Han also met with both the outgoing and incoming Japanese Embassy Economic Counsellor on 14 June 2016 to discuss competition cooperation, stating that the two countries would continue to work together to promote and enhance bilateral cooperation.

Deputy Director-General Han led a delegation from the MOFCOM to attend the Sixth St Petersburg International Legal Forum held in St Petersburg on 19–20 May 2016. He made a presentation about self-regulatory mechanisms to promote competition in the pharmaceutical and automobile industries, and other socially sensitive markets. The 5 BRICS countries also signed a memorandum of understanding on cooperation in the field of competition law and policy at the forum.

Sources: <http://fldj.mofcom.gov.cn/article/xxfb/201605/20160501312612.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201606/20160601338914.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201605/20160501324646.shtml>

3. Update on the NDRC's Activities

The Director-General of the NDRC Price Supervision and Anti-Monopoly Bureau, Zhang Handong, met with Chairperson Anna Wu of the Hong Kong Competition Commission on 4 May 2016 and with representatives of the US-based Institute of Electrical and Electronics Engineers on 16 May 2016.

On 9–10 May 2016, the Deputy Director-General of the NDRC Price Supervision and Anti-Monopoly Bureau, Li Qing, travelled to Singapore to attend competition related events. She held talks with the Chairman of the Competition Commission of Singapore, Toh Han Li, participated in China and Singapore-related antitrust seminars, and met with Temasek, GIC Private, and other businesses and law firms. Deputy Director-General Li also travelled to Belgium in early June to attend and deliver the keynote at the UCL Jevons Institute 10th Anniversary Colloquium on Global Antitrust Enforcement. Separately, Deputy Director-General Li met with the outgoing and incoming Japanese Embassy Economic Counsellor on 13 June 2016.

Sources: http://jjs.ndrc.gov.cn/gzdt/201605/t20160509_801101.html

http://jjs.ndrc.gov.cn/gzdt/201605/t20160517_801932.html

http://jjs.ndrc.gov.cn/gzdt/201606/t20160617_807585.html

http://jjs.ndrc.gov.cn/gzdt/201606/t20160627_808707.html

http://jjs.ndrc.gov.cn/gzdt/201605/t20160526_804876.html

4. SAIC launches 289 investigations nationwide in antitrust campaign targeting public utilities

As a part of the campaign to address anticompetitive conduct by public utilities, in April and May 2016, the SAIC and its local branches launched 289 antitrust investigations, 59 of which have been concluded. In response to the national campaign, for example, the Hainan AIC and the Jiangsu AIC recently announced enforcement actions targeting public enterprises in industries including electricity, gas and water supply.

Sources: http://www.legaldaily.com.cn/index/content/2016-06/17/content_6677100.htm?node=20908

http://www.saic.gov.cn/jgzf/fldyfbzljz/201605/t20160517_168600.html

http://www.saic.gov.cn/jgzf/fldyfbzljz/201605/t20160511_168504.html

5. Update on the SAIC's Activities

On 7–8 May 2016, the SAIC participated in the 2016 Guangzhou Shenzhen Competition and Antitrust Practice Forum. It was the first time that Chinese lawyers associations had jointly held a forum on competition matters. It covered both antitrust and anti-unfair competition issues. More than 100 people attended, which included representatives from the Anti-Monopoly Commission's Expert Advisory Group, Chinese competition agencies, the judiciary, well-known universities and research institutes, law firms, and legal departments of Chinese and foreign companies.

On 12 May 2016, the SAIC participated in the Automotive Industry Competition Law Issues Seminar jointly held by Tsinghua University and the China Automotive Technology Research Centre. Issues relating to auto parts, sales, and distribution were discussed.

Separately, Chairperson Anna Wu of the Hong Kong Competition Commission visited the SAIC on 4 May 2016.

Sources: http://www.saic.gov.cn/fldyfbzdjz/gzdt/201605/t20160509_168435.html

http://www.saic.gov.cn/fldyfbzdjz/gzdt/201605/t20160512_168538.html

http://www.saic.gov.cn/fldyfbzdjz/gzdt/201605/t20160504_168335.html

6. China's competition agencies attend ABA conference in Hong Kong

Representatives from China's 3 competition agencies participated in a panel discussion at the Antitrust in Asia conference held by the American Bar Association in Hong Kong on 2–3 June 2016. They discussed the drafting of implementing regulations, competition enforcement, and international cooperation. Other conference attendees included representatives from the competition agencies of the United States, Japan, Korea, India, Pakistan, and Hong Kong, businesses, law firms, and academics.

Source: <http://fldj.mofcom.gov.cn/article/xxfb/201606/20160601334359.shtml>

4. Central and Local Government News

1. State Council announces reform plans to end salt monopoly

On 5 May 2016, China's State Council published a reform plan for the salt industry. According to the plan, China will, amongst other matters, liberalise price controls of all salt-related products, apply new licensing requirements, and allow non-public capital to invest in the salt industry. After a transition period until 31 December 2016, the reform plan is scheduled to be officially implemented on 1 January 2017. Further, from 1 January 2018, designated salt producers and wholesalers can start applying for licenses in accordance with new regulations.

Source: http://www.gov.cn/zhengce/content/2016-05/05/content_5070516.htm

2. State Council calls for strengthened competition law enforcement to crack down IPR infringement and counterfeiting

On 4 May 2016, the State Council issued a notice listing key points for cracking down on intellectual property right infringements and the production and sale of counterfeit and substandard goods. The State Council specifically requested that the 3 antitrust agencies take charge of investigating illegal conduct including abuses of intellectual property rights and other types of anticompetitive conduct. In addition, the State Council recommended that the revision of the AUCL be pushed through.

Source: http://www.gov.cn/zhengce/content/2016-05/04/content_5070227.htm

5. News of State-Owned Enterprises

1. SASAC holds SOE Science and Technology Innovation Conference in Beijing

On 17 June 2016, the SOE Science and Technology Innovation Conference was held in Beijing. Zhang Yi, Party Secretary of the State-owned Assets Supervision and Administration Commission, addressed the importance of SOEs integrating innovation resources, deepening SOE reforms, and promoting technology innovation.

Source: <http://www.sasac.gov.cn/n85881/n85901/c2362912/content.html>

6. Other News/Media Comments

1. ICC China sets up commission on competition

The inaugural meeting of the China Chamber of International Commerce (ICC China) Commission on Competition was held on 23 May 2016. The preparation report and working regulations of the commission were approved and Guan Qing, Chairman of China State Construction Engineering Corporation, was elected to be Chair of the commission. As the fifth specialised commission of ICC China, the ICC Commission on Competition aims to support regulators in the formulation of regulations and policies.

Sources: http://www.legaldaily.com.cn/index/content/2016-05/23/content_6642844.htm?node=20908

http://www.ccpit.org/Contents/Channel_3434/2016/0524/648290/content_648290.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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