

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 National Development and Reform Commission (NDRC) has been tasked by the Anti-Monopoly Commission (AMC) to draft a set of 6 antitrust guidelines to be adopted by the AMC. The drafting of 2 of those guidelines is reportedly underway. The local offices of the NDRC and the State Administration for Industry and Commerce (SAIC) have both investigated anticompetitive conduct in the telecommunications industry. One case involved the abuse of administrative power and a cartel, whereas the other was an abuse of dominance case.

1. Laws and Policies

1. Opinion issued on deregulating the price of medicines

On 4 May 2015, the NDRC, together with the National Health and Family Planning Commission, the Ministry of Human Resources and Social Security, the Ministry of Industry and Information Technology, the Ministry of Finance, the Ministry of Commerce (MOFCOM), and the China Food and Drug Administration, issued the *Opinion on Pushing Forward Pharmaceutical Pricing Reform*. According to the opinion, from 1 June 2015, the pricing of the vast majority of medicines will no longer be determined by the NDRC. Instead, the price of medicines will be determined by the market. The opinion also sets out the plan to ensure healthy competition in the pharmaceutical sector. In particular, the NDRC launched a special campaign to inspect unlawful pricing activities in the pharmaceutical industry. According to the *Notice on Strengthening the Supervision of Pricing Conduct in the Pharmaceutical Market* (also issued by the NDRC on 4 May 2015), the NDRC lists 10 types of unlawful activities that will be the focus of the campaign. Among these activities, there are potential violations of the Anti-Monopoly Law (AML) such as excessive pricing and price collusion.

Sources:

http://www.ndrc.gov.cn/zcfb/zcfbtz/201505/t20150505_690664.html

http://jjs.ndrc.gov.cn/zcfg/201505/t20150505_690681.html

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2. Cases

1. Yunnan DRC investigates abuse of administrative power and cartel in the telecommunications industry in Yunnan

On 2 June 2015, the NDRC announced that its local office in Yunnan Province, the Yunnan Development and Reform Commission (Yunnan DRC), found that the Yunnan Province Communications Authority had abused its administrative powers by organising an anticompetitive agreement between telecommunications companies in breach of the AML.

From August to October 2009, the Yunnan Province Communications Authority set up meetings between the Yunnan branches of China Mobile, China Telecom, China Unicom, and China Tietong. At the end of 2009, these telecommunication companies signed an agreement that covered the content, amount, and frequency of offers and discounts to customers, specified the types of offers that would not be run, capped the frequency and value of offers, and capped the value of points in rewards programs. The companies also agreed on specific implementation steps. If any of the companies breached the agreement, the other companies could report the breach to the Yunnan Province Communications Authority, who would then order that company to rectify its conduct. In June 2011, the Yunnan Province Communications Authority held a meeting to refine the breach resolution procedure, requiring the companies to negotiate to settle any breach and only report the breach to the Yunnan Province Communications Authority if the parties could not agree.

The Yunnan DRC found that the 4 companies are the main operators in the telecommunications market and direct competitors. It held that one of the main ways to compete is through customer offers and discounts. By assisting these companies to enter into an agreement that restricts offers and discounts, helping them to implement that agreement, and requiring the companies to negotiate in the event of breach of that agreement, the Yunnan Province Communications Authority was found to have eliminated and restricted competition in violation of Articles 8 and 36 of the AML.

The Yunnan DRC urged the Yunnan Province Communications Authority to rectify and stop its conduct and restore fair competition in the market. The NDRC also communicated with the Ministry of Industry and Information Technology (MIIT) on this matter. Going forward, the MIIT will guide its provincial-level authorities in strengthening their awareness of the AML, improving their administrative capacity, and cleaning up similar conduct within their jurisdictions.

The 4 telecommunication companies were fined a total of RMB 13.18 million. The Yunnan branches of China Mobile, China Telecom, and China Unicom, which were found to have implemented the agreement, were each fined 2% of their sales revenues in the relevant market in the previous year. The Yunnan branch of China Tietong, which did not implement the agreement, was fined RMB 200,000.

Source: http://jjs.ndrc.gov.cn/gzdt/201506/t20150602_694801.html

2. Hunan AIC investigates shale brick cartel in Mayang

On 1 June 2015, the SAIC published the decisions made by the Hunan Administration for Industry and Commerce (Hunan AIC) in December 2014 and January 2015 relating to its investigation into a shale brick cartel in the Mayang Miao Autonomous County. The investigation was triggered by public complaints filed in July 2013.

In March 2011, the Mayang County Shale Brick Industry Association was established by 27 (and later 29) local shale brick companies. Between March 2011 to September 2013, through the industry association, the shale brick companies entered into a series of agreements whereby they agreed on matters such as limiting production output and not expanding capacity, driving out non-Mayang County bricks by pricing at a certain level, setting the ex-factory and delivered prices of bricks, and allocating territories to various companies. The agreements also provided for sanctions in case of breach and the payment of management fees to the industry association.

The Hunan AIC found that the shale brick companies had breached Articles 13(2) and 13(3) of the AML. The

companies were found to have monopolised the shale brick market in Mayang, eliminated and restricted competition, and even threatened government departments by visiting and petitioning to higher-level authorities to prevent new market entry. The Hunan AIC also decided that the agreements did not qualify for exemption under Article 15 of the AML because the companies had caused serious harm to competition in the shale brick market, raised the costs for construction and related industries in the shale brick industry value chain, and harmed consumer interest.

Nine individuals and 1 company were ordered to stop the illegal conduct and fined a total of RMB 1,389,400.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/201506/t20150601_156889.html

3. Tied sales of landline telephone services investigated in Ningxia

The SAIC reported that, on 15 May 2015, the Administration for Industry and Commerce in the Ningxia Hui Autonomous Region (Ningxia AIC) suspended its antitrust investigation of the Ningxia branches of China Tietong, China Unicom, and China Telecom. It also authorised the Yinchuan Market Supervisory Authority, the Yinchuan Economic and Technological Development Zone Administration for Industry and Commerce, and the Ningdong Administration for Industry and Commerce to monitor the companies' compliance with their commitments.

In June 2013, the Ningxia AIC initiated an abuse of dominance investigation into the 3 telecommunications companies for engaging in tying conduct. During the course of the investigation, the 3 companies admitted that they had tied the sale of landline telephone services to the provision of fixed Internet services and that this conduct had deprived consumers of choice and adversely affected competition in the market. The companies committed to rectifying their conduct by (i) engaging in company-wide "self-correction" work and stopping the tying conduct; (ii) publicising customers' choice of products and services through media outlets, their business centres and other publicity channels; and (iii) ensuring that requests to cancel landline telephone services, which had been forced upon customers, are properly handled.

Source: http://www.saic.gov.cn/jgjf/fldyfbzljz/201505/t20150527_156779.html

4. One of China's first administrative monopoly court cases heard in Guangdong

On 28 May 2015, the Guangdong High People's Court heard the appeal of the administrative monopoly case against the Guangdong Education Department filed by Shenzhen Sware Technology. The court is expected to announce its decision shortly.

The case is one of the first administrative monopoly court cases in China. Shenzhen Sware Technology claimed that the Guangdong Education Department had abused its administrative powers by appointing Glodon, a competitor software company, as the exclusive designated software provider for a contest organised by the Guangdong Education Bureau for vocational students in violation the AML and the Anti-Unfair Competition Law (AUCL).

At first instance, on 2 February 2015, the Guangzhou Intermediate People's Court ruled that the Guangdong Education Bureau had violated the AML by selecting a company as the exclusive designated software supplier. Both Glodon (as the third party) and the Guangdong Education Department appealed that decision.

Sources: <http://gd.xinshiyun.com/play/vod?id=17852¤tCourtId=13>

http://news.xinhuanet.com/legal/2015-05/28/c_127853858.htm

5. Emiage loses its appeal in its abuse of dominance case against Qihoo 360

According to a news report in May 2015, the Beijing High People's Court has handed down its judgment in the *Emiage v Qihoo 360* case. As discussed in the January/February 2015 edition of the China Competition Bulletin, the Beijing Intermediate People's Court had ruled in favor of Qihoo 360 in the first instance in an

abuse of dominance case brought by Emiage. Emiage accused Qihoo 360 of abusing its market dominance and engaging in unfair competition by using its mobile phone security application to block Emiage's text messages and electronic business cards as spam. The Beijing High People's Court upheld that decision on appeal. It dismissed Emiage's claims and held that Qihoo 360 was not dominant. Unlike the Beijing Intermediate People's Court, the Beijing High People's Court did not go on to examine whether Qihoo 360's conduct constituted an abuse of dominance.

Source: <http://tech.caijing.com.cn/20150513/3881477.shtml>

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

1. The NDRC to draft various antitrust guidelines

According to news reports, the AMC has authorised the NDRC to draft 6 antitrust guidelines, covering the abuse of intellectual property rights (IPRs), antitrust regulations for the automobile industry, leniency, exemption procedures, suspension of investigation procedures, and the calculation of fines. The antitrust guidelines will ultimately be adopted by the AMC.

On 12 June 2015, the NDRC Price Supervision and Anti-Monopoly Bureau held a preparatory meeting to officially launch the drafting of the antitrust guidelines. The NDRC plans to conduct targeted research and produce a preliminary draft within 1 year. After a preliminary draft is completed internally, the NDRC intends to consult more widely. The NDRC has reportedly started its drafting of the antitrust guidelines for anticompetitive abuses of IPRs and also for the automobile industry. The report comes shortly after the official release of the SAIC's *Regulation on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights* in April this year.

Source: http://news.xinhuanet.com/finance/2015-06/18/c_127928081.htm

2. Update on the NDRC's enforcement activities

On 20 May 2015, Lu Yanchun, Deputy Director of the NDRC's Price Supervision and Anti-Monopoly Bureau, met with Jeff Scott, senior researcher at the Peter G Peterson Institute for International Economics, and Robert Lawrence, professor of Harvard Kennedy School, to discuss a range of antitrust topics.

Source: http://jjs.ndrc.gov.cn/gzdt/201505/t20150521_692725.html

3. Update on the MOFCOM's enforcement activities

On 14–20 May 2015, Shang Ming, Director-General of the MOFCOM Anti-Monopoly Bureau, led a delegation to visit Canada and the United States. During the visit, the Anti-Monopoly Bureau and the Canadian Competition Bureau signed a memorandum of understanding. In the United States, the delegation had discussions with the US Department of Justice and the Federal Trade Commission.

In addition, the Anti-Monopoly Bureau sent delegations to Shanghai and Wuxi (led by Director-General Shang Ming on 4–7 May 2015) and Hefei (led by Deputy Director-General Wu Zhenguo on 3–5 June 2015) for merger investigations. The delegations conducted field investigations, held seminars for relevant businesses, and inspected production lines. The local commerce departments also participated in the field investigations.

Sources: <http://fldj.mofcom.gov.cn/article/xxfb/201505/20150500987415.shtml>

[http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/mofcom-MOU-en.pdf/\\$file/mofcom-MOU-en.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/mofcom-MOU-en.pdf/$file/mofcom-MOU-en.pdf)

<http://fldj.mofcom.gov.cn/article/xxfb/201506/20150601005095.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201505/20150500968832.shtml>

4. The SAIC has completed the draft amendments to the AUCL

On 1 June 2015, it was reported that the SAIC had completed the draft amendments to the AUCL. The draft amendments will reportedly be submitted to the State Council Legislative Affairs Office for further review. The AUCL has not been amended since its promulgation in 1993. According to the report, the key amendments relate to the definition of “unfair competition conduct”, increasing enforcement intensity and penalties, and clarifying that the SAIC is the sole enforcement agency of the AUCL.

Source: http://news.cb.com.cn/html/economy_9_25486_1.html

5. Update on the SAIC's enforcement activities

On 7 May 2015, Lu Wanli, Deputy Director-General of the SAIC Antimonopoly and Anti-Unfair Competition Enforcement Bureau, and Professor Wang Xianlin of Shanghai Jiao Tong University participated in an online chat conducted by the People's Daily Online to explain the *Regulation on the Prohibition of Conduct Eliminating or Restricting Competition Through the Abuse of Intellectual Property Rights*.

On 25 May 2015, officials from the SAIC Antimonopoly and Anti-Unfair Competition Enforcement Bureau participated in a seminar on antitrust enforcement held by the Antitrust Law and Economics Research Centre of Shanghai University of Finance and Economics. They discussed the development of intellectual property antitrust regulations, economic analysis in antitrust enforcement, and other topics with domestic and international experts.

On 15 and 16 June 2015, the SAIC, the US Federal Trade Commission, and Chinese the Ministry of Justice jointly held the “US-China vertical agreements and investigation skills seminar” in Shenzhen. Around 100 SAIC officials from different SAIC branches throughout China attended the seminar. Focusing on vertical agreements, the participants of the seminar had in-depth discussions over competition analyses, investigation skills, and enforcement practices. In addition, the US experts spoke on several new issues, such as most-favored-nation clauses and hub-and-spoke cases.

Sources: http://www.saic.gov.cn/fldyfbzdzjz/gzdt/201505/t20150522_156643.html

http://www.saic.gov.cn/fldyfbzdzjz/gzdt/201505/t20150526_156740.html

http://www.saic.gov.cn/fldyfbzdzjz/gzdt/201506/t20150625_157946.html

4. Central and Local Government News

1. Fujian Price Bureau adopts antitrust measures for the China (Fujian) Pilot Free Trade Zone

On 30 April 2015, the Fujian Price Bureau issued the Anti-Price Monopoly Measures for the China (Fujian) Pilot Free Trade Zone. The aims of the measures are to enhance the market price order, protect consumer interests and the public interest, and to curb anticompetitive pricing conduct. The measures empower the Management Committee within the Pilot Free Trade Zone to assist the provincial Price Bureau in price-related antitrust investigations, accept complaints by whistle-blowers, and accept leniency applications.

Source: <http://www.china-fjftz.gov.cn/article/index/aid/740.html>

2. State Council issues opinion on developing e-commerce

On 7 May 2015, the State Council issued the *Opinion on Vigorously Developing E-Commerce to Accelerate the Nurturing of New Economic Drivers*. The opinion lists 29 measures to help develop e-commerce in 7 key areas. One of these measures is to maintain fair competition in the e-commerce market. The opinion stresses the importance of investigating and sanctioning anticompetitive conduct, strengthening IPR protection, and combatting anticompetitive conduct by government departments.

Source: http://www.gov.cn/zhengce/content/2015-05/07/content_9707.htm

3. Mechanism established to periodically review tender and bidding related laws and regulations

On 15 April 2015, the NDRC, the MIIT, the Ministry of Housing and Urban Construction, the Ministry of Transport, the Ministry of Water Resources, the MOFCOM, and the State Council Legislative Affairs Office jointly issued the *Opinion on Establishing a Long-term Mechanism to Review and Standardise Tender and Bidding Related Provisions*. The opinion aims to ensure the implementation of tender and bidding related laws and regulations to develop the role of tenders and bids in the competitive process, prevent arbitrary approvals and rent-seeking, break up regional and industry monopolies, and promote the healthy and sustained development of the tender and bidding market. A regular review mechanism will be established and a comprehensive review must be conducted every 3 years. A directory that lists the reviewed tender and bidding related laws and regulations will be created. There will be enhanced disclosure on tender and bidding related laws and regulations, and mechanisms for regulation review and evaluation will be improved.

Source: http://www.sdpc.gov.cn/xwzx/xwfb/201505/t20150506_690890.html

4. State Council approves opinion on deepening economic system reform in 2015

On 8 May 2015, the State Council approved the NDRC's *Opinion on the Key Tasks for Deepening Economic System Reform in 2015*. The opinion sets out specific tasks and goals in the following areas: accelerating government reforms; deepening business reforms; implementing the general plan for fiscal and tax reforms; advancing financial reforms; accelerating reforms of urbanization, rural and agricultural systems; launching a new round of opening-up policy; deepening reforms regarding people's livelihood; and building the ecological system. Topics such as streamlining administration, delegating powers to lower levels of government, reforms of state-owned enterprises (SOEs), implementing the government budget system, and further opening-up were emphasised.

Source: http://www.gov.cn/zhengce/content/2015-05/18/content_9779.htm

5. News of State-Owned Enterprises

1. Framework documents for SOE reform expected soon

The *Opinion on the Key Tasks for Deepening Economic System Reform in 2015* provides additional guidance for SOE reforms this year. In particular, the opinion mentions that a set of framework documents will be formulated to act as guidelines for SOE reform. These documents include a guiding opinion on deepening SOE reform; a plan on improving the management of state-owned assets; an adjustment and reorganisation plan for central SOEs; a plan on improving the governance of SOEs; revised measures on the performance assessment of SOE directors; an opinion on setting up an audit supervision mechanism for state-owned capital; an opinion on establishing an accountability system for the operation and investment of SOEs; and an opinion on encouraging and regulating non-state-owned capital to be introduced to the SOEs' investment projects. The adjustment and reorganisation plan for central SOEs is expected to lead to more mergers and acquisitions among central SOEs.

Sources: <http://finance.sina.com.cn/china/20150518/191522207581.shtml>

<http://finance.people.com.cn/n/2015/0519/c1004-27022337.html>

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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