

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 & Economics Network at
Melbourne Law School,
University of Melbourne

Edition 35: January/February
2015

Highlights

The National Development and Reform Commission (NDRC) has ended its long-running investigation into Qualcomm, fining Qualcomm over RMB 6 billion for abusing its dominance in breach of the Anti-Monopoly Law (AML). This is the largest fine imposed under the AML to date. Qualcomm has also committed to changing some of its licensing practices in China.

The Ministry of Commerce (MOFCOM) has also been busy. It published its decision to fine a state-owned enterprise (SOE) for not notifying its acquisition for merger clearance. It also sanctioned Western Digital for not complying with the commitments that it made when it acquired Hitachi's hard disk drive business in 2012. Further, a new merger remedies regulation, replacing the previous regulation that had been in effect since July 2010, came into effect in January 2015.

We wish everyone a happy Lunar New Year and the best for the Year of the Sheep!

1. Laws and Policies

1. The MOFCOM releases new merger remedies regulation and interpretation

In December 2014, the MOFCOM released a new merger remedies regulation and an accompanying interpretation. The *Regulation on the Imposition of Restrictive Conditions in Concentrations between Business Operators (Trial)* came into effect on 5 January 2015, and replaced the existing *Interim Regulation on the Implementation of Asset or Business Divestiture in Concentrations between Business Operators* that was adopted in July 2010. The MOFCOM's interpretation sheds some light on how it will implement the new regulation.

The scope of the new regulation is somewhat broader than that of the interim regulation as it covers structural, behavioural, and hybrid conditions and provides more detail on the process involved. But, like the interim regulation, the new regulation mainly focuses on divestiture and structural remedies, and only applies to behavioural remedies by analogy.

Editors

Professor Allan Fels, AO 艾伦·菲尔斯
Professorial Fellow, Melbourne Law School,
University of Melbourne, Australia

Co-Director, University of Chinese Academy
of Sciences (UCAS) Centre for Competition
Law

Former Chairman, the Australian
Competition and Consumer Commission
(ACCC)

afels@unimelb.edu.au

Professor Xiaoye Wang 王晓晔
Institute of Law, Chinese Academy of Social
Sciences (CASS) and Hunan University

Director, UCAS Centre for Competition Law

Member of the Expert's Committee of the
Anti-Monopoly Commission under the State
Council of the P R China

wangxiaoye88@live.cn

Dr Wendy Ng 吴颖诗
Lecturer, Adelaide Law School, University of
Adelaide, Australia
wendy.ng@adelaide.edu.au

Adrian Emch
Lecturer of Competition Law, Peking
University, China
adrian.emch@gmail.com

In this edition

1. Laws and Policies	1
2. Cases	3
3. News of the Anti-Monopoly Enforcement Agencies and the Courts	7
4. Central and Local Government News	10
5. News of State-Owned Enterprises	11
6. Other News/Media Comments	11
7. Selected Publications in English	11

In its interpretation, the MOFCOM explains that remedy proposals should be effective (sufficient to remove any anticompetitive effect), feasible (operational in practice), and timely (capable of quickly resolving the competition problem). The interpretation also notes that the two main aims of divestiture are to neutralise the merging parties' ability to control the market and to improve the ability of the buyer of the divested business to exert competitive pressure on the merging parties.

Sources: <http://www.mofcom.gov.cn/article/b/c/201412/20141200835207.shtml>

<http://fldj.mofcom.gov.cn/article/j/201412/20141200835988.shtml>

2. The MOFCOM releases draft Foreign Investment Law including provisions about VIE structures

The MOFCOM issued a draft *Foreign Investment Law* (Draft Law) for public comment on 19 January 2015. The Draft Law is accompanied by an announcement (Draft Law Announcement) which outlines some of the reasoning and principles applied by the MOFCOM in preparing the Draft Law. The public consultation period ends on 17 February 2015.

The foreign investment regime as outlined in the Draft Law is expected to have a substantial impact on foreign investment into China. It unifies China's legal regime on inbound investment, which is currently regulated by the *Wholly Foreign-Owned Enterprise Law*, the *Sino-Foreign Equity Joint Venture Law*, the *Sino-Foreign Contractual Joint Venture Law*, and their respective implementing rules. These existing laws and regulations will be repealed and replaced by the Draft Law. The Draft Law proposes a three-year transition period during which existing foreign invested enterprises will need to comply with, amongst others, the provisions of the *Company Law*. This suggests a broader trend towards applying the same rules to foreign-invested and domestic capital companies.

The Draft Law replaces the existing approval system for foreign investment and instead adopts the "negative list" approach. The State Council will publish a "negative list" that sets out the sectors where foreign investment is restricted or prohibited and investment amount thresholds. Foreign investors will no longer require market entry approval unless they invest in the prohibited or restricted sectors or exceed the investment amount thresholds. The Draft Law also sets out a unified national security review system.

Particularly relevant to antitrust is that the Draft Law expressly addresses the legal status of variable interest entities (VIEs). In China, VIEs are typically (but not necessarily) used by companies that operate in sectors that are restricted (or even prohibited) to foreign investment. They are also often used by companies that want to operate in certain restricted sectors but also wish to attract foreign investment or go public overseas. For more than a decade, the Chinese government has left VIEs, particularly those operating in the technology, media, and telecommunications sectors, in a grey area of the law. Because of this, VIE cases face significant challenges in the MOFCOM's merger review procedure.

The Draft Law proposes to eliminate the ambiguity by defining "control" very broadly so as to include "control through contract", which is the typical approach used by VIEs. According to the Draft Law and the Draft Law Announcement, the nature of the entity that "has actual control over" a Chinese enterprise (whether a Chinese or foreign investor) will determine what sectors that enterprise may engage in. Therefore, a Chinese enterprise that is determined as being controlled by a Chinese investor will be treated as a Chinese company. The MOFCOM has proposed three alternative approaches on how to deal with existing VIEs in the Draft Law Announcement.

Source: <http://tfs.mofcom.gov.cn/article/as/201501/20150100871010.shtml>

3. China commits to increasing transparency in antitrust enforcement

During the 25th US-China Joint Commission on Commerce and Trade held in Chicago between 16–18 December 2014, China agreed to make its antitrust enforcement activities more transparent. Local counsel will be able to participate in meetings with antitrust enforcement agencies without restrictions. China also agreed that, under normal circumstances, qualified foreign lawyers will be allowed to accompany their clients

to meetings in proceedings before Chinese antitrust enforcement bodies. In addition, China also clarified that foreign and domestic companies will be treated equally and committed to increase transparency for investigated companies.

Sources: <http://www.mofcom.gov.cn/article/ae/ai/201412/20141200848900.shtml>

<http://www.commerce.gov/news/fact-sheets/2014/12/19/fact-sheet-25th-us-china-joint-commission-commerce-and-trade>

2. Cases

1. NDRC imposes a record fine of over RMB 6 billion on Qualcomm

On 10 February 2015, the NDRC announced that it had found that Qualcomm had abused its dominant market position and imposed a fine of RMB 6.088 billion, which was equal to 8% of Qualcomm's 2013 sales revenues in China. This is largest antitrust fine imposed by the NDRC to date.

The NDRC found that Qualcomm held a dominant position in the market for the licensing of patents essential to the wireless communications standards CDMA, WCDMA, and LTE and the baseband chip market, and had engaged in the following conduct when dealing with Chinese licensees:

- refused to provide a patent list, included expired patents in the patent portfolio that was licensed, required licensees to cross license relevant patents for free and refused to deduct the value of such patents from licensing fees or provide other consideration, and collected patent royalties based on the net wholesale price per unit while bundling the licensing of non-essential patents. Such conduct combined to result in unfairly high patent licensing fees
- bundled the licensing of non-essential patents and standard essential patents without legitimate justification
- imposed unreasonable conditions by conditioning the sales of baseband chips on Chinese licensees' signing and not challenging patent license agreements, thereby forcing Chinese licensees to accept unfair and unreasonable patent licensing conditions

To cooperate with the NDRC's investigation, Qualcomm committed to undertake remedial measures to address such conduct, including:

- charging patent royalties based on 65% of the net wholesale price for devices sold for use within China
- providing a patent list and not charge royalties for expired patents when licensing patents to Chinese licensees
- not requiring Chinese licensees to cross license their relevant patents free of charge
- not tying the licensing of wireless communications standard essential patents to non-essential patents without legitimate justification
- when selling baseband chips, not requiring Chinese licensees to sign license agreements containing unreasonable conditions and not conditioning the supply of baseband chips to Chinese licensees on not challenging patent license agreements

Qualcomm has also stated that it would increase its investment in China.

Source: http://jjs.ndrc.gov.cn/gzdt/201502/t20150210_663872.html

2. Quarry operators in Wuxi sanctioned for market sharing

On 4 November 2014, the Chongqing Administration for Industry and Commerce (AIC) made public its August 2014 decision to fine four quarry operators in Wuxi for market sharing. The Chongqing AIC began its investigation in December 2012 after receiving evidence from the Wuxi County Public Security Bureau and authorisation from the State Administration for Industry and Commerce (SAIC) in Beijing.

Prior to June 2011, there was intense competition between quarry operators in Wuxi due to the construction of the E4 to E10 sections of the Bong Creek Highway. In response, representatives from the quarry operators met on several occasions in May 2011 and agreed to divide the supply of sand and gravel to the seven sections of the Bong Creek Highway construction amongst themselves. Each quarry operator then contacted the relevant highway construction project department to inform it that the quarry operator would only supply sand and gravel in accordance with the joint plan. The Chongqing AIC noted that, due to the special nature of sand and gravel and cost considerations, the project departments could only obtain supply from these quarry operators. From July 2011, the four quarry operators supplied sand and gravel to the construction of the Bong Creek Highway in accordance with their agreement.

The Chongqing AIC found that the four quarry operators had breached Article 13(3) of the AML by reaching and implementing a market sharing agreement. The four operators were fined a total of RMB 400,000.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201411/t20141104_149669.html

3. Jiangsu AIC punishes cigarette wholesaler in Pizhou for abusing its dominant position

On 4 November 2014, the SAIC published the Jiangsu AIC's September decision to punish the Pizhou branch of Xuzhou Tobacco Company (Pizhou Tobacco) for engaging in discriminatory treatment. This investigation was initiated in August 2013 in response to customer complaints.

The Jiangsu AIC found that Pizhou Tobacco held a dominant position in the cigarette wholesale market in Pizhou. Pizhou Tobacco is the only operator in Pizhou to hold a cigarette wholesale licence, meaning that cigarette retailers in Pizhou were completely dependent on it for their cigarette supply.

The Jiangsu AIC ruled that Pizhou Tobacco had used its dominant position to discriminate between cigarette retailers. In 2009, Pizhou Tobacco divided the 7,300 cigarette retailers in Pizhou into 42 categories, in compliance with notices issued by the State Tobacco Monopoly Administration and China Cigarette Sales Company (a SOE). Further, from 2010 onwards, Pizhou Tobacco adopted its own "KA customers management policy" whereby it selected key customers and gave those customers with preferential treatment over ordinary customers with respect to orders, promotion, and supply. The Jiangsu AIC did not appear to object to these practices.

However, the Jiangsu AIC found that Pizhou Tobacco had breached Article 17(6) of the AML by engaging in differential treatment amongst KA customers. Golden Eagle, Jiangsu Happy Buy, and Xuzhou Happy Buy were all KA customers. However, Golden Eagle was allowed to place more orders per week and was supplied a larger quantity of bestselling cigarettes than either Jiangsu Happy Buy or Xuzhou Happy Buy. Pizhou Tobacco contended that its actions were reasonable and justified because they were not customers of equal standing, as Golden Eagle had stronger operating capabilities, larger sales volumes, and provided more jobs. However, these arguments were not accepted by the Jiangsu AIC.

Pizhou Tobacco was fined RMB 1,723,745 (1% of its 2012 sales of bestselling cigarettes) and ordered to stop the illegal conduct. In making this decision, the Jiangsu AIC took into account the fact that Pizhou Tobacco had cooperated with the investigation, undertook corrective measures, and revised its KA customers management policy.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201411/t20141104_149670.html

4. Chongqing AIC sanctions natural gas supplier for abuse of dominance

On 28 April 2014, Chongqing Gas was found to have abused its dominance in breach of the AML. The decision was made public on 28 November 2014. This conduct was discovered as part of a wider investigation that the Chongqing AIC was conducting in May 2010 into public utilities. The Chongqing AIC began investigating the case in July 2010, and received authorisation from the SAIC to begin a formal investigation in June 2011.

In concluding that Chongqing Gas possessed a dominant position in the supply of natural gas in seven districts of Chongqing, the Chongqing AIC considered market share, ability to control the market, the dependence of business operators on Chongqing Gas, and barriers to entry. Chongqing Gas supplies the vast majority of natural gas to the seven districts in Chongqing. Although there is another natural gas supplier in Chongqing, it uses a separate pipeline network that does not overlap with Chongqing Gas's pipeline network. Chongqing Gas is also able to control the conditions for supply of natural gas and consumers are generally very reliant on it for natural gas supply. The barriers to entry are high due to the significant investment costs, high degree of difficulty, long cost recovery period, and strict legal requirements for the supply of natural gas.

The Chongqing AIC found that Chongqing Gas had used its dominant position to impose trading conditions without a valid reason. One of the terms in its standard non-residential customer contracts provided that the amount charged would not be based on actual gas consumption, but on a "correction factor" that was calculated based on the gas meter reading, gas pipeline pressure, and temperature. From 2008 to 2010, Chongqing Gas unilaterally set the correction factor for non-residential customers who did not use gas meters with automatic correction capabilities. The Chongqing AIC considered that this practice was not justified, as Chongqing Gas had no right to unilaterally correct these legally allowed errors and it was inconsistent with regulations. Moreover, this practice restricted the right of non-residential customer to choose their gas supplier and had increased their financial burden, resulting in consumer harm.

The Chongqing AIC found that Chongqing Gas had breached Article 17(5) of the AML. Chongqing Gas was ordered to stop the illegal conduct and was fined just under RMB 1,794,000 (1% of 2010 sales). The sanction imposed was relatively light, since the company had cooperated with the investigations, the number of affected customers was relatively small (0.6%), and it took measures to rectify its conduct.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201411/t20141128_150175.html

5. Zhejiang AIC fines a concrete industry association in Shangyu and its members for market sharing

On 1 December 2014, the SAIC announced that the Zhejiang AIC had sanctioned eight concrete companies and an industry association in Shangyu for market sharing. The investigation began in August 2011, with the decisions being handed down in September 2014.

The Shangyu Concrete Industry Association was formed in April 2010, and its members entered into and implemented market sharing agreements in May 2010 and May 2011. The industry association and its members were found to have breached Articles 16 and 13(3) of the AML, respectively, and were fined RMB 1,720,000 in total.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/201412/t20141201_150200.html

6. The SAIC terminates investigation into Shankai Sports International

On 12 January 2015, the SAIC released its decision to terminate its AML investigation into bundled sales by Shankai Sports International.

As previously reported in the May/June 2014 edition of this bulletin, Shankai was the exclusive hospitality package sales agent for the 2014 FIFA World Cup in Greater China. Shankai had bundled other services into the hospitality packages, including accommodation, local transportation, and travel services, but did not inform customers that the hospitality packages could be purchased separately. After the SAIC began its investigation, Shankai committed to changing its sales practices and eliminating the negative effects on the market. The SAIC suspended the investigation on 2 June 2014. Afterwards, Shankai submitted a written report on its compliance with the commitments and applied for the termination of the investigation. The SAIC held that Shankai had complied with the commitments and agreed to terminate the investigation.

Source: http://www.saic.gov.cn/zwgk/gggs/jzzf/201501/t20150112_151220.html

7. Courier companies in Ningxia fined for price fixing

The Ningxia Price Bureau undertook an eight month long investigation into eight courier companies for price fixing. The bureau started its investigation on the basis of complaints from local e-commerce companies. The courier companies repeatedly agreed on a minimum price, and some of them forwarded that agreement to the e-commerce companies. The Ningxia Price Bureau imposed administrative penalties on six of the courier companies and ordered two companies to undertake corrective measures. Five of the courier companies sanctioned applied for administrative reconsideration, but were unsuccessful.

Source: <http://nx.people.com.cn/n/2014/1225/c192482-23336782.html>

8. Hainan AIC sanctions local water supply company for abuse of dominance

On 26 January 2015, the Hainan AIC penalised a local state-owned water supply company nearly RMB 594,000 and confiscated around RMB 38,000 in illegal profits for abuse of dominance.

The Hainan AIC found that the water supply company had abused its dominance by collecting deposit money from new users without valid justification from 2003 onwards. When users refused to pay, the company would threaten them with refusal to supply water.

Source: <http://www.hinews.cn/news/system/2015/01/27/017279243.shtml>

9. Beijing court dismisses Emiage's abuse of dominance lawsuit against Qihoo 360

On 31 December 2014, the Beijing Intermediate People's Court ruled in favor of Qihoo 360 in an abuse of dominance case brought by Emiage.

Emiage is a software company whose products allow users to share electronic business cards and exchange text messages on mobile phones. 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 court dismissed Emiage's claims and held that Qihoo 360 was not dominant. The court also rejected the assertion that Qihoo 360's blocking constituted exclusive dealing or bundling.

Source: <http://tech.163.com/14/1231/17/AEQDJBAB000915BF.html>

10. Kunming court rules against Sinopec in refusal to deal case

On 8 December 2014, the Yunnan branch of Sinopec, a SOE, lost a private antitrust lawsuit brought by Yunnan Yingding, a local bio-diesel maker. Both the plaintiff and the defendant had appealed the first-instance judgment.

Yunnan Yingding sued Sinopec and its Yunnan branch for refusal to deal in early 2014. The Kunming Intermediate People's Court ruled in favor of the plaintiff and ordered Sinopec's Yunnan branch to buy bio-diesel produced by Yunnan Yingding Bio-Energy Co. within a period of 30 days. However, the court rejected the plaintiff's RMB 3 million damages claim.

Sources: <http://energy.people.com.cn/n/2014/1219/c71661-26237487.html>

http://news.xinhuanet.com/legal/2015-01/06/c_1113900382.htm

11. Jiangsu court dismisses abuse of dominance case against Sinopec

The Jiangsu High Court recently released an appellate ruling made in August 2014 in an antitrust lawsuit brought by Gaoyou Tongyuan Oil Freight against Taizhou Petroleum and Chemical Corporation and its two controlling shareholders, Yangzi Petrochemical Corporation and Sinopec.

Gaoyou Tongyuan sued the defendants for abuse of dominance in oil transport. It claimed that the defendants had discriminated against certain oil transport carriers. At the first instance, the Nanjing Intermediate Court dismissed the plaintiff's claims for lack of evidence proving the defendants' dominant market positions. On appeal, the Jiangsu High People's Court re-defined the relevant market and affirmed the first-instance decision by holding the defendants not to be dominant.

Source: http://www.court.gov.cn/zgcpwsw/jiangsu/ms/201412/t20141217_4936316.htm

12. Antitrust lawsuit against local salt companies

In December 2014, the Jiangxi High People's Court dismissed an abuse of dominance lawsuit against two local state-owned salt companies, affirming the first-instance decisions by the Nanchang Intermediate People's Court. The Jiangxi High People's Court ruled that the Jiangxi Salt Industry Group Corporation and its Nanchang branch were not the correct defendants, and that the plaintiff should have sued the salt administrative authority instead.

Source: <http://openlaw.cn/judgement/2ac2bc8ff5f34c189271e2deb1faf935>

13. Beijing court orders Qihoo 360 to pay Sogou RMB 5.1 million in unfair competition case

On 19 January 2015, a Beijing court ruled in favor of Sogou in its unfair competition lawsuit against Qihoo 360. Qihoo 360 was ordered to pay Sogou RMB 5.1 million in damages. This is the highest compensation payment ordered in similar cases to date.

In September 2013, Sogou filed an unfair competition lawsuit against Qihoo 360. The Beijing Intermediate Court ruled that Qihoo 360's behaviour constituted unfair competition as its defense security software had blocked users from installing Sogou's browser and prevented users from setting Sogou's browser as their default browser.

Source: <http://tech.qq.com/a/20150119/044930.htm>

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

1. The MOFCOM releases list of unconditional merger clearances for the fourth quarter of 2014

On 12 January 2015, the MOFCOM released a list of 75 mergers that it unconditionally cleared in the fourth quarter of 2014.

Source: <http://fldj.mofcom.gov.cn/article/zcfb/201501/20150100863949.shtml>

2. The MOFCOM fines Tsinghua Unigroup for failing to notify its 2014 acquisition of RDA Microelectronics for merger clearance

On 2 December 2014, the MOFCOM fined Tsinghua Unigroup, a SOE, RMB 300,000 for failing to notify its acquisition of RDA Microelectronics for pre-merger review and clearance.

The MOFCOM found that the acquisition had reached the merger notification threshold and that Tsinghua Unigroup implemented the acquisition without first notifying the merger to the MOFCOM, in breach of the AML and its regulations. Having assessed the competitive impact of the acquisition, the MOFCOM concluded that it did not eliminate or restrict competition.

The MOFCOM had previously stated that it had investigated and sanctioned several companies for failing to comply with the merger notification requirements, but did not provide further information on those investigations and decisions. This is the first time that the MOFCOM has made the outcome of such an investigation and its decision publicly available. It is also noteworthy that the MOFCOM has fined a SOE for not complying with the merger notification requirements, sending a clear message that the AML applies to all types of businesses.

Source: <http://tfs.mofcom.gov.cn/article/ckts/ckzcfg/201412/20141200824277.shtml>

3. The MOFCOM fines Western Digital for failing to comply with remedies imposed in 2012 acquisition of Hitachi's hard disk drive business

On 2 December 2014, the MOFCOM sanctioned Western Digital for failing to comply with the hold-separate commitments that the company had made to the MOFCOM in its acquisition of Hitachi's hard disk business, Viviti, in 2012. This is the first time that the MOFCOM has sanctioned a business operator for not complying with remedies in merger clearance decisions.

When the MOFCOM initially approved Western Digital's acquisition in March 2012, Western Digital was required to, *inter alia*, maintain Viviti's pre-transaction state, ensure that Viviti remained an independent legal entity, and conduct Viviti's business independently. The MOFCOM found that Western Digital breached this condition in two ways. First, in March 2012, Western Digital transferred Viviti's US subsidiary to become a wholly-owned subsidiary of Western Digital Technologies, Inc. and, second, Western Digital closed down Viviti's development department and transferred the relevant staff to Western Digital in July 2013. Both actions were not approved by the MOFCOM.

In the course of the investigations, Western Digital admitted that it had breached the 2012 remedies and submitted proposals to rectify the illegal conduct. The MOFCOM fined Western Digital a total of RMB 600,000 (RMB 300,000 for each violation) and gave Western Digital 45 days to implement measures to rectify the illegal conduct.

Sources:

<http://tfs.mofcom.gov.cn/article/ckts/ckzcfg/201412/20141200824270.shtml>

<http://tfs.mofcom.gov.cn/article/ckts/ckzcfg/201412/20141200824263.shtml>

4. The MOFCOM confirms Google/Motorola Mobility remedy release

On 6 January 2015, the MOFCOM issued an announcement confirming that Google was released from part of the remedies the regulator had imposed in its clearance of the company's acquisition of Motorola Mobility in 2012.

In the past, the MOFCOM seems to have released Mitsubishi Rayon from remedy obligations relating to its acquisition of Lucite International.

Source: <http://fldj.mofcom.gov.cn/article/ztxx/201501/20150100862331.shtml>

5. Court upholds antitrust fine imposed by the Jiangsu Price Bureau

In December 2014, the Nanjing Intermediate People's Court upheld the Jiangsu Price Bureau's decision to fine two companies for breaching the AML and dismissed their administrative lawsuits.

A year earlier, in December 2013, the Jiangsu Price Bureau had fined the Nanjing Concrete Industry Association and 37 companies a total of RMB 39 million for breaching the AML. However, the industry association and four companies refused to pay the fines. The Jiangsu Price Bureau applied to the Nanjing Intermediate People's Court to enforce its decisions. Further, three of the above-mentioned companies also filed administrative lawsuits, which one of them subsequently abandoned.

The court dismissed the administrative lawsuits challenging the Jiangsu Price Bureau's decisions, holding that the two companies had provided false evidence and misled the court into believing that the limitation period had not yet expired and that there was no legitimate reason for the proceedings.

Source: http://jjs.ndrc.gov.cn/gzdt/201412/t20141208_651321.html

6. Update on the NDRC's enforcement activities

The Eighth EU-China Competition Week and training workshop was held in Sichuan on 21–22 October 2014. The themes of the week were antitrust issues in the finance industry, antitrust enforcement procedures, and international exchange and cooperation.

On 28 November 2014, Mr Xu Kunlin, the Director-General of the NDRC Price Supervision and Anti-Monopoly Bureau, met with a delegation from the European Chamber of Commerce to discuss matters relating to AML enforcement and pharmaceutical pricing reform.

On 14 January 2015, the NDRC signed an agreement with Shanghai University for cooperation on AML-related matters. Under the agreement, the NDRC can ask Shanghai University to conduct research and organise training activities, and will provide research opportunities and assistance to Shanghai University students. Shanghai University can select young academics to participate in the NDRC's enforcement activities and invite NDRC officials and experts to give lectures. The university will also establish the Shanghai Competition Ecology Research Centre. Both parties will cooperate on the "China Price Regulation and Antitrust" magazine.

The NDRC has expanded its staff numbers at the central and local levels in response to the increasing antitrust workload.

Sources:

http://jjs.ndrc.gov.cn/gzdt/201410/t20141029_635018.html

http://jjs.ndrc.gov.cn/gzdt/201412/t20141202_650788.html

http://jjs.ndrc.gov.cn/gzdt/201412/t20141204_650978.html

http://jjs.ndrc.gov.cn/gzdt/201501/t20150116_660429.html

<http://magazine.caijing.com.cn/20150112/3796624.shtml>

7. Update on the SAIC's enforcement activities

Ms Ren Airon, the Director-General of the SAIC Antimonopoly and Anti-Unfair Competition Enforcement Bureau, attended the Multinational Companies Investment Forum held by Global Times on 6 December 2014. The topic was the legal system development and investment environment in China. Ms Ren stated that the SAIC would continue to focus on issues that are of concern to the public and the society at large and promote AML enforcement.

A number of AICs discussed their AML plans for 2015. The Shanghai AIC stated that it would invite more academics to provide AML training for its enforcement staff. The Shanxi AIC indicated that it will work with the local commerce and price authorities to issue regulations to combat administrative monopoly and undertake province-wide enforcement activities targeting administrative monopoly. The Tianjin City Market Regulatory Commission also plans to promote AML enforcement and strengthen the AML regulatory environment.

Sources:

http://www.saic.gov.cn/fldyfbzdjz/gzdt/201412/t20141209_150352.html

http://www.saic.gov.cn/jgzf/fldyfbzljz/201501/t20150107_151113.html

8. Specialised intellectual property courts established

On 31 October 2014, the Supreme People's Court released a regulation specifying the jurisdiction of the intellectual property courts in Beijing, Shanghai, and Guangzhou. The intellectual property courts will be the court of first instance for civil and administrative cases relating to patents, new plant varieties, integrated circuit designs, technological secrets and computer software; administrative cases relating to copyright, trademark, and unfair competition; and civil cases involving well-known trademarks. Appeals from civil and administrative copyright, trademark, and unfair competition cases will also be heard by the intellectual property courts.

The Beijing Intellectual Property Court began accepting cases on 6 November 2014.

Sources:

<http://www.chinacourt.org/law/detail/2014/10/id/147980.shtml>

http://news.xinhuanet.com/photo/2014-11/07/c_127188670_2.htm

4. Central and Local Government News

1. Fujian Provincial Government issues opinion to promote fair market competition

On 17 November 2014, the Fujian Provincial Government issued an opinion to implement the State Council's opinion on promoting fair market competition to maintain the normal market order, which had been released in June 2014. Some measures to be taken include combatting administrative monopoly and sanctioning anti-competitive conduct.

Source: http://www.fujian.gov.cn/zwgk/zxwj/szfwj/201411/t20141118_895241.htm

2. Draft Template for IPR policies for standards organisations released

The Electronic Intellectual Property Rights Center (eIPR), a think-tank affiliated with the Ministry of Industry and Information Technology, has proposed a draft template for the intellectual property policies of industry standards organisations. The draft template is not compulsory and standards organisations can adopt and adjust the template.

In particular, the eIPR has addressed two controversial issues in its draft template. First, as part of the fair, reasonable and non-discriminatory obligation of standard essential patents holders, licensors should agree to negotiate with potential licensees over special licensing conditions. The draft template also specifies the conditions under which injunctions should be sought. Second, the draft template stipulates various considerations upon which a reasonable royalty rate may be calculated, for example the value that a standard essential patent contributes to the standard.

Source: <https://chinaipr2.files.wordpress.com/2014/11/e3808ae8a18ce4b89ae6a087e58786e58c96e7bb84e7bb87e79fa5e8af86e4baa7e69d83e694bfe7ad96e6a8a1e69dbfe3808b1027.docx>

5. News of State-Owned Enterprises

1. Chinese SOE mixed ownership reform plan expected soon

Ji Xiaonan, Chairman of the Supervisory Board for Key Large State-Owned Enterprises under the State Council, has stated that the central government has passed measures for mixed ownership reform and that a diversified ownership reform plan for SOEs is expected soon.

Source: <http://finance.people.com.cn/n/2014/1120/c1004-26058916.html>

6. Other News/Media Comments

1. Mercedes-Benz further cuts prices of spare parts in China amid ongoing antitrust probe

Mercedes-Benz has reportedly reduced the prices of spare parts in China. The price reductions range from 8% to 25%. The Jiangsu Price Bureau has also stated that its antitrust investigation in Mercedes-Benz is continuing.

Sources: <http://finance.chinanews.com/auto/2015/01-19/6980057.shtml>

<http://js.people.com.cn/n/2015/0120/c360301-23615125.html>

2. BMW agrees to compensate Chinese distributors' losses

BMW has reportedly agreed to pay RMB 5.1 billion to its distributors in China to help cover losses after retailers stopped ordering cars from the manufacturer. Audi and Mercedes-Benz also reportedly handed out RMB 2.05 billion and 1 billion to distributors.

Source: <http://finance.chinanews.com/auto/2015/01-08/6947155.shtml>

7. Selected Publications in English

1. CPI Antitrust Chronicle Winter 2015, Volume 2 Number 1: China 2015 update

To celebrate Chinese New Year, the latest edition of the CPI Antitrust Chronicle is dedicated to discussing recent antitrust developments in China.

More information is available at: <https://www.competitionpolicyinternational.com/chronicle>

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

Disclaimer:

*By clicking on the links you are entering third party websites. Please refer to the relevant websites for terms and conditions of use. *This publication provides general information only.