

# 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 39: September/October  
2015

## Highlights

The Ministry of Commerce (MOFCOM) conditionally cleared Nokia's acquisition of Alcatel-Lucent. This is the MOFCOM's first conditional merger decision in over a year. It also varied the conditions attached to its approval of Western Digital's and Seagate's respective acquisitions in the hard disk drive (HDD) industry from several years ago. Further, the MOFCOM fined several companies, including some state-owned enterprises (SOEs), for failing to notify their mergers for review under the Anti-Monopoly Law (AML).

The local office of the State Administration for Industry and Commerce (SAIC) in Inner Mongolia suspended its abuse of dominance investigation into China Mobile, whereas its Anhui office imposed a fine on a company for not cooperating with its antitrust investigation. Another antitrust investigation in the automobile industry has come to a close, with Dongfeng Nissan and 17 of its distributors in Guangdong fined by the Guangdong Development and Reform Commission (Guangdong DRC) for engaging in resale price maintenance and price fixing, respectively.

In the past 2 months, the Chinese competition agencies have entered into memoranda of understanding (MOU) on antitrust cooperation with the competition agencies of Japan, Australia, and Russia. The MOFCOM also entered a framework for cooperation on merger review with the Directorate-General for Competition of the European Commission (DG Comp).

## 1. Cases

### 1. The MOFCOM conditionally approves Nokia's acquisition of Alcatel-Lucent

The MOFCOM conditionally approved Nokia's acquisition of Alcatel-Lucent on 19 October 2015. The MOFCOM's review went into extended phase 2, lasting 126 days.

## 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. Cases	1
2. News of the Anti-Monopoly Enforcement Agencies and the Courts	8
3. Central and Local Government News	11
4. News of State-Owned Enterprises	12
5. Other News/Media Comments	13

### *Competition assessment*

The MOFCOM assessed the impact of the acquisition on the wireless communications network equipment and services (consisting of Radio Access Networks (RAN), and Core Network Systems (CNS), and network infrastructure services) and communications technology standard essential patent (SEP) licensing markets in China.

The MOFCOM found that the acquisition would unlikely have an anticompetitive effect in the RAN, CNS, and network infrastructure services markets. Whilst the merging parties have competitive overlaps in these markets, the merged entity will face strong competitors such as Huawei, ZTE, and Ericsson, who are able to act as competitive restraints on the parties.

In contrast, the MOFCOM concluded that the acquisition would have an anticompetitive effect in the market for communications technology SEP licensing. The acquisition would strengthen Nokia's position in all segments of the communications technology SEP market and increase the degree of concentration. Communications SEPs are the main barriers to entry to related downstream markets such as mobile devices and wireless communications equipment manufacturing. The abuse of communications SEPs such as refusing to grant licenses, charging excessively high licensing fees, or engaging in discriminatory treatment of licensees may distort competition in the downstream markets. Further, Alcatel-Lucent holds a large portfolio of 2G and 3G SEPs, and the acquisition would strengthen Nokia's bargaining power in patent negotiations. In China, a majority of the actual and potential licensees are mobile device and wireless communications network equipment manufacturers. Most of these manufacturers will not have the leverage to cross-license with Nokia. Therefore, if Nokia makes unreasonable changes to its SEP licensing strategy, it could harm the mobile device and wireless communications network equipment markets in China. China is the world's largest producer of mobile phones, accounting for more than 50% of global shipments, but Chinese mobile device and wireless communications network equipment manufacturers have low profit margins. As such, any unreasonable changes to Nokia's SEP licensing policy may lead these businesses to exit the market or pass on all or some of those costs to consumers.

### *Remedies*

To address the MOFCOM's concerns, Nokia proposed several rounds of remedies. The MOFCOM believed that the following commitments given by Nokia addressed its concerns:

- Nokia confirmed that, subject to reciprocity, it will not seek injunctions to prevent the use of SEPs granted on fair, reasonable, and non-discriminatory (FRAND) terms except where the SEP holder has offered FRAND compliant license terms and the potential licensee has not entered into the license nor complied with its terms in good faith
- Where Nokia transfers any SEP to a third party in the future:
  - Nokia will promptly inform its existing licensees in China and Chinese businesses with whom it is in active negotiations of such transfer. In particular, Nokia will provide information on the name and address of the transferee, the effective date of the transfer, and the rights transferred
  - If such transfer significantly affects the value of any Chinese licensee's Nokia SEP portfolio, an existing licensee has the right to renegotiate fees upon expiry of the existing (licensing) agreement and Nokia will reconsider the royalty rate for potential licensees. Nokia will also consider new SEPs that may be included in its patent portfolio when renegotiating the royalty rate
- The transfer shall be subject to the condition that the transferee will be bound by Nokia's FRAND commitments owed to standard setting organisations

Nokia is required to report on its compliance with the commitments within 45 days of the end of the calendar year. The commitments are effective for 5 years and expire on 18 October 2020.

Further, as part of the acquisition, Nokia signed a memorandum of understanding with China Huaxin Post & Telecommunication Economy Development Center, a SOE, to enter into a joint venture to combine Nokia's telecommunications infrastructure businesses in China with Alcatel-Lucent Shanghai Bell and operate as Nokia Shanghai Bell.

The acquisition has also received antitrust clearance from Albania, Brazil, Canada, Colombia, the European Commission, Russia, Serbia, and the United States.

Sources: <http://fldj.mofcom.gov.cn/article/ztxx/201510/20151001139743.shtml>

<http://company.nokia.com/en/news/press-releases/2015/08/28/nokia-and-china-huaxin-sign-memorandum-of-understanding-to-create-new-joint-venture-combining-nokia-china-and-alcatel-lucent-shanghai-bell>

## **2. The MOFCOM varies the conditions in the Seagate/Samsung and Western Digital/Hitachi Storage conditional clearances**

In 2 separate decisions, the MOFCOM varied the conditions attached to its approvals of Western Digital's acquisition of Hitachi Storage's hard disk drive (HDD) business (now known as HGST) in 2012 and Seagate's acquisition of Samsung's HDD business in 2011. The MOFCOM had required Western Digital and Seagate each to maintain the acquired HDD business as a separate and independent business.

In May 2013, Seagate applied to be released from the hold separate commitments and the commitment to maintain and expand Samsung HDD's capacity for 6 months after the MOFCOM's decision. Western Digital had also applied for release from its commitments in March 2014, but the MOFCOM did not accept that application as it had been investigating Western Digital for non-compliance with those commitments. After the MOFCOM sanctioned Western Digital for not complying with the hold separate commitments that it had provided to the MOFCOM, the MOFCOM formally accepted Western Digital's application on 30 January 2015.

In assessing both applications, the MOFCOM reviewed the each party's compliance with their commitments, examined changes in the market conditions and competition, and assessed the reasons for and effect of releasing each party from their commitments. During this process, the MOFCOM met with each party on multiple occasions and requested additional information; consulted with relevant government authorities, industry associations, and downstream businesses; and engaged an independent third party to conduct economic analysis.

### *Competition assessment*

The MOFCOM found that, since 2011, solid state drives (SSDs) had become an increasingly significant competitive constraint on HDDs in both portable applications and enterprise applications, with a growing market share, and that this trend is expected to continue. It also found that there is now significantly greater excess capacity in the HDD industry, with capacity utilisation of HDD manufacturers at around 80%. The competitive landscape has not changed significantly since 2012, as the identity and number of competitors have not changed. Western Digital, HGST, and Seagate remain key competitors in the storage market, whereas Samsung is relatively weaker. The MOFCOM also recognised that the hold separate commitment restricts Western Digital and HGST from fully participating in competition, and Western Digital argued that full participation in competition would greatly reduce costs.

### *Western Digital's revised commitments*

The MOFCOM decided to release Western Digital from the hold separate commitment insofar as it relates to production and research and development activities but that it would maintain the independence of the product brands and sales. This would help Western Digital reduce its costs and enable full participation in the market. At the same time, maintaining competition between the two independent sales teams and product brands would help to reduce the anticompetitive effects of the merger.

After multiple rounds of consultation between the MOFCOM and Western Digital, Western Digital agreed to maintain the independence of product brands and sales teams. The MOFCOM agreed to modify the conditions attached to its 2012 approval and Western Digital must:

- Maintain the independence of the sales teams and product brands of Western Digital and HGST and ensure effective competition between them
- Not materially change its previous business model or force customers to purchase HDD products exclusively from Western Digital
- Continue to invest in research and development at a rate consistent with recent years

#### *Seagate's revised commitments*

For Seagate, the MOFCOM decided to grant its request to release it from the hold separate commitment and the commitment to reasonably maintain or adjust Samsung HDD's capacity. The release of these commitments would not adversely affect the market and could lower Seagate's production and research and developments costs. At the same time, the MOFCOM noted that it was not appropriate to release Seagate from all its commitments, as the HDD market has not changed much and Seagate's market strength would be further enhanced if it were allowed to fully integrate with Samsung HDD.

As such, Seagate is required to continue to comply with the remaining commitments as per the MOFCOM's 2011 decision. As such, Seagate must:

- Not materially change its current business model or force customers to exclusively purchase its HDDs
- Not force TDK to supply magnetic disk heads exclusively to Seagate or its controlled entities or restrict the quantity that TDK sells to other HDD manufacturers
- Continue to investment in research and development, at the same levels as recent years

#### *Common commitments*

Both Western Digital and Seagate must formulate detailed plans to ensure the implementation of the revised commitments. The MOFCOM and the monitoring trustee will supervise the implementation of the commitments, which apply for 2 years. Western Digital and Seagate may apply to the MOFCOM to be released from these obligations prior to the end of the 2-year period, but it must provide sufficient evidence to demonstrate that the market has changed significantly. The MOFCOM also specifically provided that it may extend the 2-year period or make other decisions pursuant to the AML if Western Digital fails to comply with its obligations.

Sources: <http://fldj.mofcom.gov.cn/article/ztxx/201510/20151001139040.shtml>

<http://fldj.mofcom.gov.cn/article/ztxx/201510/20151001144105.shtml>

### **3. The MOFCOM fines companies, including SOEs, for failing to notify mergers for review**

On 29 September 2015, the MOFCOM released 4 decisions in which it sanctioned various companies for failing to notify their mergers for review. The decisions were all made on 16 September 2015.

#### *Fujian Electronic's acquisition of 35% interest in Shenzhen Zhongnuo*

Fujian Electronics and Information Group (Fujian Electronics) was fined RMB 150,000 for not notifying its acquisition of Shenzhen Zhongnuo Telecommunications (Shenzhen Zhongnuo) for antitrust clearance. Fujian Electronics acquired a 35% interest in Shenzhen Zhongnuo on 16 July 2014. On 31 July 2014, Fujian Furi Electronics (an indirectly controlled subsidiary of Fujian Electronics) purchased 100% of the shares in Shenzhen Zhongnuo, and that acquisition was notified to the MOFCOM for review on 12 August 2014. It was during the public consultation period for that acquisition (which is part of a simplified merger review process)

that the MOFCOM received information that Fujian Electronics had already obtained control of Shenzhen Zhongnuo in July 2014 and had allegedly not notified that acquisition in compliance with the law. The MOFCOM began its investigation on 15 December 2014.

#### *Shanghai Fosun's acquisition of 35% interest in Suzhou Erye*

The Shanghai Fosun Pharmaceutical Group (Shanghai Fosun) planned to acquire 65% of the shares in Suzhou Eyre Pharmaceutical (Suzhou Eyre). One subsidiary of Shanghai Fosun would purchase a 35% stake in Suzhou Eyre, and another subsidiary would purchase the remaining 30% interest. Shanghai Fosun approached the MOFCOM in December 2014 to engage in pre-merger consultation. During this consultation process, the MOFCOM found out that Shanghai Fosun had completed its purchase of 35% of the shares in Suzhou Eyre without first obtaining the MOFCOM's approval to do so. In response, the MOFCOM initiated an investigation on 16 March 2015, and later imposed a fine of RMB 200,000.

#### *Joint venture between CSR Nanjing Puzhen and Bombardier Transportation Sweden*

On 3 November 2014, CSR Nanjing Puzhen Rolling Stock and Bombardier Transportation Sweden agreed to establish a 50/50 joint venture. The joint venture obtained its business license on 11 November 2014. On 29 December 2014, the parties voluntarily informed the MOFCOM that their joint venture had already obtained its business license and they may not have complied with the merger notification requirement. They wanted to file a late notification. The MOFCOM began an investigation on 3 March 2015 and later decided to fine the parties RMB 150,000.

#### *Joint venture between BesTV and Microsoft*

BesTV and Microsoft were fined RMB 200,000 in relation to the establishment of their 51/49 joint venture. BesTV and Microsoft had signed a joint venture agreement on 17 September 2013, and the joint venture was formally established on 1 October 2013. In June 2014, the MOFCOM's received a complaint that the joint venture may not have been notified for antitrust review, which prompted the MOFCOM to initiate an investigation on 6 January 2015.

#### *The MOFCOM's approach in each case*

The MOFCOM determined that the transaction did constitute a concentration under Article 20 of the AML and had reached the notification thresholds. As such, by not notifying the transaction to the MOFCOM for antitrust review, each party had violated Article 21 of the AML. Further, the MOFCOM assessed the impact of the concentration on the market and found that the concentration did not have an anticompetitive effect. When determining the level of the fine to be imposed, the MOFCOM took into account whether the parties had subsequently notified the merger for review (as occurred in all 4 cases) and their cooperation with the investigation (CSR Nanjing Puzhen/Bombardier and BesTV/Microsoft).

Not only do these cases show that the MOFCOM is taking steps to address non-compliance by businesses with the merger notification requirements, they also clearly show that mergers involving SOEs are subject to the AML. BesTV and Fujian Electronics are both locally owned SOEs, whereas CSR Nanjing Puzhen is a subsidiary of a centrally owned SOE.

Sources: <http://fldj.mofcom.gov.cn/article/ztxx/201509/20150901124887.shtml>

<http://fldj.mofcom.gov.cn/article/ztxx/201509/20150901124896.shtml>

<http://fldj.mofcom.gov.cn/article/ztxx/201509/20150901124899.shtml>

<http://fldj.mofcom.gov.cn/article/ztxx/201509/20150901124903.shtml>

#### **4. Inner Mongolia AIC suspends its abuse of dominance investigation into China Mobile**

On 1 September 2015, the Inner Mongolia Administration for Industry and Commerce (Inner Mongolia AIC) suspended its abuse of dominance investigation into China Mobile's branch in Inner Mongolia (Inner Mongolia Mobile). After obtaining authorisation from the State Administration for Industry and Commerce (SAIC), the Inner Mongolia AIC initiated an investigation on 21 April 2014.

Inner Mongolia Mobile provides Internet services to over 64% of the Internet users in Inner Mongolia. Its mobile phone data plans do not allow users to roll over unused data to the next month. During the investigation, Inner Mongolia Mobile admitted that its conduct had adversely affected competition and that it had abused its dominance. On 12 May 2015, Inner Mongolia Mobile submitted commitments to the Inner Mongolia AIC and requested that the investigation be suspended. Inner Mongolia Mobile committed to offer new voice and data plans that provide customers with more choices, such as the ability to roll over unused data.

The Inner Mongolia AIC determined that these commitments were sufficient to address its concerns. It also noted that Inner Mongolia Mobile had cooperated with the investigation. As such, the Inner Mongolia AIC decided to suspend the investigation. It will assess Inner Mongolia Mobile's compliance with the commitments on or before 30 May 2016 to determine whether to resume the investigation.

This decision was made public on 14 September 2015.

Source: [http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201509/t20150917\\_161789.html](http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201509/t20150917_161789.html)

#### **5. Guangdong DRC fines Dongfeng Nissan and 17 distributors for resale price maintenance and price fixing**

On 10 September 2015, the Guangdong DRC announced that it had investigated Dongfeng Nissan and 17 of its distributors in Guangdong for engaging in resale price maintenance and price fixing, respectively.

The Guangdong DRC began its antitrust investigation in August 2014. It found that, between 2012 to July 2014, Dongfeng Nissan had implemented business practices, price management measures, and assessment systems that restricted the resale price of its cars sold through car dealers in Guangdong. In 2013, Dongfeng Nissan also penalised car dealers that did not comply with such policies. The Guangdong DRC held that Dongfeng Nissan had reached and implemented an agreement with its distributors in Guangdong to fix the resale price of cars and breached Article 14 of the AML. Further, Guangdong DRC determined that, between April 2012 to July 2014, with the assistance of Dongfeng Nissan, the distributors in Guangdong had held numerous meetings and made and implemented agreements to fix the price of cars, in violation of Article 13 of the AML.

Dongfeng Nissan was fined RMB 123.2 million (3% of its previous year's turnover), and the 17 distributors were each fined between 2–4% of their previous year's turnover, for a total of RMB 19.12 million. In setting the fines, the Guangdong DRC noted that Dongfeng Nissan had cooperated with the investigation, stopped its illegal conduct immediately, and revised its distribution agreement, business practices, and corporate governance policies. It also noted that the Guangdong distributors had stopped price negotiations and abolished its regional price agreement.

This case is the most recent in a series of cases where the Chinese competition agencies investigated and fined automobile manufacturers and dealers for engaging in anticompetitive conduct. Other cases have involved FAW-Volkswagen, Chrysler, and Mercedes and their local dealers, and BMW dealers.

Source: [http://www.gddpc.gov.cn/zwgk/gzdt/gzyw/201509/t20150910\\_328993.html](http://www.gddpc.gov.cn/zwgk/gzdt/gzyw/201509/t20150910_328993.html)

## **6. The NDRC orders local health and family planning commissions to rectify abuse of administrative power**

On 2 November 2015, the National Development and Reform Commission (NDRC) published its decision on its investigation into centralised drug procurement practices in Sichuan and Zhejiang. It found that the provincial health and family planning commissions in both provinces had implemented local protectionism measures and designated suppliers, which had restricted competition in drug procurement. The NDRC found that such conduct amounted to abuse of administrative power in breach of the AML. After the NDRC's investigation, the provincial health and family planning commissions in Sichuan and Zhejiang implemented measures to rectify their conduct.

Source: [http://www.ndrc.gov.cn/gzdt/201511/t20151102\\_757334.html](http://www.ndrc.gov.cn/gzdt/201511/t20151102_757334.html)

## **7. Anhui AIC fines Sunyard System Engineering for non-cooperation in an antitrust investigation**

On 18 September 2015, the Anhui Administration for Industry and Commerce (Anhui AIC) fined Sunyard System Engineering (Sunyard) RMB 200,000 for not cooperating with its antitrust investigation. This decision was released by the SAIC on 5 November 2015.

The Anhui AIC began to investigate Sunyard for potentially abusing its dominance on 5 February 2015 after receiving authorisation from the SAIC. On 18 June 2015, the Anhui AIC issued an investigation notice to Sunyard and requested that Sunyard provide certain information by 3 July 2015. When Sunyard did not comply with this request, the Anhui AIC issued another notice to Sunyard on 8 July 2015, requesting that it comply with the original information request by 13 July 2015. Sunyard sent a letter to the Anhui AIC on 14 July 2015, in which it denied that it had abused its dominance but did not provide the requested information. On 7 September 2015, the Anhui AIC sent Sunyard a penalty notice. Sunyard requested a hearing on 10 September 2015, but it withdrew this hearing request a week later.

In the opinion of the Anhui AIC, Sunyard was required to cooperate with its investigation and not refuse to cooperate or obstruct its investigation. It found that Sunyard had refused to provide the relevant materials and had therefore breached Article 42 of the AML and Article 14 of the SAIC's *Regulation on the Procedure for Investigating and Handling Cases Involving Anticompetitive Agreements and Abuses of Dominance*.

Source: [http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201511/t20151105\\_163656.html](http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201511/t20151105_163656.html)

## **8. Guangdong Court rejects antitrust claims against China Southern Airlines**

On 5 May 2015, the Guangdong High People's Court affirmed the lower court's decision and dismissed an abuse of dominance case against China Southern Airlines. The plaintiff, Gu Fang, was a passenger whose ticket was cancelled by China Southern Airlines.

According to the Guangdong High People's Court, the relevant market was scheduled air passenger transportation services from Mianyang to Guangzhou and from Chengdu to Guangzhou. The court held that there was not enough evidence to prove that China Southern Airlines was dominant in the relevant market. Also, the court considered that China Southern Airlines' conduct did not constitute a refusal to deal prohibited under Article 17(1)(3) of the AML. In particular, the court stated that the flight cancellation was not targeted at any particular passenger and was not intended to eliminate or restrict competition. The judgment was made public in October 2015.

Sources: <http://gd.people.com.cn/n/2015/1109/c123932-27056422.html>

[http://www.court.gov.cn/zgcpwsw/gd/ms/201507/t20150729\\_9817174.htm](http://www.court.gov.cn/zgcpwsw/gd/ms/201507/t20150729_9817174.htm)

## 2. News of Anti-Monopoly Enforcement Agencies and the Courts

### 1. Unconditional merger clearances for the third quarter of 2015 released

On 9 October 2015, the MOFCOM released a list of 79 mergers that it unconditionally cleared in the third quarter of 2015.

Source: <http://fldj.mofcom.gov.cn/article/zcfb/201510/20151001128985.shtml>

### 2. The MOFCOM and the DG Comp agree on framework for merger review cooperation

After the 10th EU-China Competition Policy Dialogue held in Beijing on 15 October 2015, the MOFCOM and the DG Comp signed a framework on merger review cooperation between the two authorities. The framework is a high-level document and covers the issues of communications during the review process on issues of procedure and substance as well as relevant market definition, theory of harm, competitive impact assessment, and the design of remedies; the coordination of information requests from the merging parties and third parties; and confidentiality.

Sources: <http://fldj.mofcom.gov.cn/article/xxfb/201510/20151001134527.shtml>

[http://ec.europa.eu/competition/international/bilateral/practical\\_guidance\\_mofcom\\_en.pdf](http://ec.europa.eu/competition/international/bilateral/practical_guidance_mofcom_en.pdf)

### 3. Update on the MOFCOM

On 10 September 2015, the Chinese competition agencies held discussions with representatives from the US business community. At that meeting, the Chinese competition agencies provided some information about their enforcement activities during the period 1 August 2008 to 30 June 2015. As at 30 June 2015, the MOFCOM had completed merger review of 1143 cases, comprising of 1117 unconditional approvals, 2 prohibitions, and 24 conditional approvals.

On 20 and 21 October 2015, the MOFCOM held an AML advocacy training workshop in Shanghai. More than 100 people participated in the workshop, representing local commerce bureaus around China and central-level SOEs. The workshop covered AML laws and regulations, merger control regulations, the implementation of merger remedies, investigation of illegally implemented mergers, and preventing foreign competition law risks. Since the AML came into effect in 2008, the MOFCOM has conducted 22 such training sessions.

On 22 and 23 October 2015, the 2nd 2015 EU-China Competition Week seminar on merger review was held in Shanghai. Around 20 representatives from the Chinese competition agencies, the European Union authorities, and the Irish Competition and Consumer Protection Commission attended. Participants discussed the key issues and problems in the MOFCOM's revision of the merger notification rules and merger review rules, merger review hearings, transparency, and intellectual property issues.

Deputy Director-General Wu Zhenguo led a MOFCOM delegation to Australia and New Zealand from 21 to 28 October 2015. In New Zealand, Deputy Director-General Wu discussed a potential MOU on antitrust cooperation with Sue Begg, the Deputy Chair of the New Zealand Commerce Commission. In Australia, Deputy Director-General Wu and Australian Competition and Consumer Commission (ACCC) Chairman Rod Sims discussed some specific case cooperation mechanisms pursuant to the MOU between the MOFCOM and the ACCC.

On 3 November 2015, Deputy Director Han Chunlin met with R Adam Norwitt, President and Chief Executive Officer of Amphenol Corporation, to discuss issues related to antitrust enforcement.

Sources: <http://fldj.mofcom.gov.cn/article/xxfb/201509/20150901110203.shtml>  
<http://fldj.mofcom.gov.cn/article/xxfb/201510/20151001148051.shtml>  
<http://fldj.mofcom.gov.cn/article/xxfb/201510/20151001148057.shtml>  
<http://fldj.mofcom.gov.cn/article/xxfb/201511/20151101153659.shtml>  
<http://fldj.mofcom.gov.cn/article/xxfb/201511/20151101155354.shtml>

#### **4. The NDRC finishes preliminary draft of the antitrust guideline on abuse of IPRs**

The NDRC has completed the preliminary draft of the antitrust guideline on the abuse of intellectual property rights (IPRs) and started to consult with stakeholders. The draft guideline focuses on agreements involving IPRs that may eliminate or restrict competition, the abuse of dominance involving IPRs, and the legal analytical framework for the exercise of IPRs involving SEPs.

Sources: [http://news.xinhuanet.com/finance/2015-10/23/c\\_128349012.htm](http://news.xinhuanet.com/finance/2015-10/23/c_128349012.htm)  
<http://finance.people.com.cn/n/2015/1105/c1004-27781012.html>  
[http://www.china.com.cn/zhibo/2015-11/05/content\\_36977125.htm](http://www.china.com.cn/zhibo/2015-11/05/content_36977125.htm)

#### **5. The NDRC and the Japan Fair Trade Commission sign a MOU**

On 13 October 2015, the NDRC and the Japan Fair Trade Commission signed a MOU on developing antitrust cooperation. Both authorities will meet at least annually and discuss matters of mutual interest or exchange information. They will exchange information on significant developments in competition policy and enforcement and specific cases that the authorities are investigating, and work together on technical cooperation activities.

Sources: [http://jjs.ndrc.gov.cn/gzdt/201510/t20151013\\_754530.html](http://jjs.ndrc.gov.cn/gzdt/201510/t20151013_754530.html)  
[http://www.jftc.go.jp/en/pressreleases/yearly-2015/October/151013.files/151013\\_1.pdf](http://www.jftc.go.jp/en/pressreleases/yearly-2015/October/151013.files/151013_1.pdf)

#### **6. The NDRC and the ACCC sign a MOU**

On 5 November 2015, the NDRC and the ACCC signed a MOU on antitrust cooperation. The MOU covers cooperation on matters such as training and competition advocacy; exchange information on current or contemplated priorities, investigations, proceedings, or anticompetitive conduct that may significantly affect the other party's interests; and coordination on non-merger conduct, including exchanging information or evidence. The MOU is effective for 2 years.

The MOU was signed during NDRC Price Supervision and Anti-Monopoly Bureau Director-General Zhang Handong's visit to Australia and attendance at a competition law and economics conference held by RBB Economics in Sydney.

Source: <http://www.accc.gov.au/system/files/Memorandum%20of%20understanding%20between%20the%20National%20Development%20and%20Reform%20Commission%20and%20the%20Australian%20Competition%20and%20Consumer%20Commission.pdf>

## 7. Update on the NDRC

The NDRC has provided several updates on its antitrust enforcement activities in the past 2 months, through its participation in the meeting between the Chinese competition enforcement agencies and US businesses and press conferences in October and November. As at 30 June 2015, the NDRC and its local bureaus had handed down antitrust enforcement decisions relating to 55 cases, with the central bureau investigating 16 cases and the local bureaus investigating 39 cases. As of 15 October 2015, the NDRC had investigated 10 cases and imposed fines of RMB 6.605 billion. It has also strengthened its enforcement efforts against abuse of administrative power and, as of 5 November 2015, announced 5 abuse of administrative power cases. The NDRC is also currently meeting with relevant government departments, using questionnaires, and conducting research on enforcement procedures to progress its drafting of antitrust guidelines.

The NDRC Price Supervision and Anti-Monopoly Bureau organised a seminar to solicit the views and opinions of the members of the Anti-Monopoly Commission Expert Advisory Group on 9 September 2015. The experts made 6 recommendations on improving antitrust enforcement in China: (1) place greater importance on the role of competition policy in promoting economic development, (2) increase transparency and publish more information on cases, (3) continue to investigate abuses of administrative monopoly, (4) scientifically develop the antitrust guidelines, (5) increase antitrust training and international cooperation efforts, and (6) continue to work closely with academics.

On 14 to 17 September 2015, the NDRC Price Supervision and Anti-Monopoly Bureau held a national price supervision and inspection expert training session in Hefei. Sessions covered competition policy, market price supervision, casework, and anti-price monopoly. About 160 representatives from the 31 provincial level price bureaus attended the training session.

Sources: <http://fldj.mofcom.gov.cn/article/xxfb/201509/20150901110203.shtml>

[http://www.china.com.cn/zhibo/2015-10/15/content\\_36809100.htm?show=t](http://www.china.com.cn/zhibo/2015-10/15/content_36809100.htm?show=t)

[http://www.china.com.cn/zhibo/2015-11/05/content\\_36977125.htm](http://www.china.com.cn/zhibo/2015-11/05/content_36977125.htm)

[http://jjs.ndrc.gov.cn/gzdt/201509/t20150923\\_751889.html](http://jjs.ndrc.gov.cn/gzdt/201509/t20150923_751889.html)

[http://jjs.ndrc.gov.cn/gzdt/201509/t20150911\\_750740.html](http://jjs.ndrc.gov.cn/gzdt/201509/t20150911_750740.html)

## 8. The SAIC and the Russian Federal Antimonopoly Service sign a second MOU

The SAIC and the Russian Federal Antimonopoly Service signed a 2016-2017 MOU relating to cooperation in antitrust and anti-unfair competition matters on 23 September 2015.

Source: [http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201509/t20150929\\_162392.html](http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201509/t20150929_162392.html)

## 9. Update on the SAIC

On 2 November 2015, the SAIC reported it had recently met with Microsoft's Deputy General Counsel, at Microsoft's request. Microsoft stated that, since the SAIC began its antitrust investigation into Microsoft, Microsoft has strengthened cooperation with relevant government departments and businesses and made many improvements within the industry. It has also voluntarily cooperated with the SAIC's investigation and will continue to do so. The SAIC has requested that Microsoft provide a written report on the improved situation with Chinese government departments and businesses and provide detailed and timely responses to other matters.

At the meeting with the US business representatives, the SAIC provided some information on its enforcement activities as at 30 June 2015. The SAIC and its local bureaus have investigated a total of 54 cases (31 cases of anticompetitive agreements and 23 cases involving abuse of dominance) since the AML came into effect in 2008. Twenty-three of those investigations have been concluded.

On 12 to 13 September 2015, the SAIC, along with the MOFCOM, the NDRC, judges from the Supreme People's Court and local intellectual property courts, the US Federal Trade Commission, senior US judges, and intellectual property and antitrust academic and economic experts attended the 2015 Intellectual Property Rights and Antitrust Summit held by the China Intellectual Property Law Research Association in Beijing.

On 21 to 25 September, Deputy Director-General of the SAIC Antimonopoly and Anti-Unfair Competition Bureau Liu Yuting led a delegation to Moscow to participate in Russian Competition Week. Representatives from the 3 Chinese competition agencies and competition agencies from Brazil, India, Russia, and South Africa attended various meetings.

The SAIC also attended the 10th EU-China Competition Policy Dialogue held in Beijing on 15 October 2015 and met with the DG Comp and discussed ways to cooperate in the future.

In September 2015, the SAIC was visited by a delegation from the German Monopolies Commission and also by representatives from the US Patent and Trademark Office, the US Commerce Department, and the US Trade Representative Office. The SAIC also met with a delegation from the US Intellectual Property Owners Association to discuss the SAIC's intellectual property rights regulations.

During September and October 2015, a number of competition law training seminars were held in Anhui, Guizhou, Shenzhen, Inner Mongolia, and Chengdu for local level SAIC officials.

Sources: [http://www.saic.gov.cn/fldyfbzdjz/gzdt/201511/t20151102\\_163469.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201511/t20151102_163469.html)

<http://fldj.mofcom.gov.cn/article/xxfb/201509/20150901110203.shtml>

[http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150916\\_161748.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150916_161748.html)

[http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201509/t20150929\\_162392.html](http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201509/t20150929_162392.html)

[http://www.saic.gov.cn/fldyfbzdjz/gjil/201510/t20151016\\_162882.html](http://www.saic.gov.cn/fldyfbzdjz/gjil/201510/t20151016_162882.html)

[http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150928\\_162075.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150928_162075.html)

[http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150930\\_162488.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150930_162488.html)

[http://www.saic.gov.cn/fldyfbzdjz/gjil/201511/t20151104\\_163605.html](http://www.saic.gov.cn/fldyfbzdjz/gjil/201511/t20151104_163605.html)

[http://www.saic.gov.cn/fldyfbzdjz/gzdt/201510/t20151010\\_162668.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201510/t20151010_162668.html)

[http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150921\\_161870.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150921_161870.html)

[http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150921\\_161858.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150921_161858.html)

[http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150909\\_161491.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201509/t20150909_161491.html)

[http://www.saic.gov.cn/fldyfbzdjz/gzdt/201511/t20151103\\_163548.html](http://www.saic.gov.cn/fldyfbzdjz/gzdt/201511/t20151103_163548.html)

### 3. Central and Local Government News

#### 1. Fifth Plenum of the 18th CCP Central Committee finalises the 13th Five-Year Plan (2016-2020)

The 18th Central Committee of the Chinese Communist Party (CCP Central Committee) held its fifth plenum in Beijing on 26 to 29 October 2015. At that meeting, the CCP Central Committee finalised the 13th Five-Year Plan, which will be China's economic, social, and technological blueprint over the next five years (2016 to 2020). The plan will be officially adopted by the National People's Congress early next year.

In its communiqué, the CCP Central Committee emphasised that the importance of innovation to China's development. It also stated that development must be coordinated, balanced, environmentally sound, and open, and the benefits must be shared by all people.

Source: [http://news.xinhuanet.com/politics/2015-10/29/c\\_1116983078.htm](http://news.xinhuanet.com/politics/2015-10/29/c_1116983078.htm)

## **2. The CCP Central Committee and the State Council issue opinions on pricing reform**

On 12 October 2015, the CCP Central Committee and the State Council jointly issued opinions on promoting price reform. The opinions clarify matters relating to the key tasks of pricing reform, which are to deepen reform of critical areas, to establish and improve the government pricing system, to strengthen price supervision and antitrust enforcement, and to use pricing leverage to serve macroeconomic control purposes.

Source: [http://tgs.ndrc.gov.cn/ggkx/201510/t20151023\\_755566.html](http://tgs.ndrc.gov.cn/ggkx/201510/t20151023_755566.html)

## **3. Guidance on exempting SMEs from the AML issued for the Shanghai FTZ on a trial basis**

On 23 September 2015, the Shanghai Price Bureau issued a guidance on exempting small and medium sized businesses (SMEs) from the AML in the Shanghai Free Trade Zone (Shanghai FTZ). The guidance is in effect for 2 years.

According to the guidance, when a SME is under an antitrust investigation by a Shanghai competition agency due to a suspected anticompetitive agreement, the SME may submit a written application for exemption to the agency if: (1) the SME believes that Article 15 of the AML (which provides efficiency justifications for potentially anticompetitive agreements) is applicable to the relevant agreement; (2) at least one party to the agreement is registered within the Shanghai FTZ; and (3) the relevant market is within the administrative region of Shanghai. If the exemption application is based on Article 15(1)(1)-(5) of the AML, the SME must also prove that the agreement will not severely restrict competition in the relevant market and enable consumers to share the resulting benefits (which are further detailed in the guidance). The guidance also sets out the criteria for SMEs, defines applicable anticompetitive agreements, and provides examples of anticompetitive agreements between SMEs that are procompetitive.

Source: [http://fgw.sh.gov.cn/main?main\\_colid=319&top\\_id=312&main\\_artid=26593](http://fgw.sh.gov.cn/main?main_colid=319&top_id=312&main_artid=26593)

## **4. Antitrust measures adopted for the Tianjin FTZ**

On 14 September 2015, the Tianjin Development and Reform Commission, the Tianjin Commission of Commerce, and the Tianjin Market Supervision Administration issued antitrust measures that will apply in the Tianjin Free Trade Zone (Tianjin FTZ). The Tianjin competition authorities will establish a joint work mechanism to exchange information and case leads and a joint antitrust coordination office in the Tianjin FTZ.

Source: [http://www.tjdpc.gov.cn/zwgk/zcfg/wnwj/flfg/201509/t20150922\\_58445.shtml](http://www.tjdpc.gov.cn/zwgk/zcfg/wnwj/flfg/201509/t20150922_58445.shtml)

# **4. News of State-Owned Enterprises**

## **1. The CCP Central Committee and the State Council publish guidance on deepening SOE reform**

On 13 September 2015, the CCP Central Committee and the State Council released guidance on deepening SOE reforms. On the same day, Zhang Yi, the Director and Party Secretary of the State-owned Assets Supervision and Administration Commission (SASAC), answered questions from the media on the drafting background, guiding thoughts, and the key reform measures of the guidance. According to Mr Zhang, SOEs will be classified into commercial SOEs and public SOEs, and improvements must be made to the modern enterprise system, state-owned assets management, and the mixed ownership economy.

On 18 September 2015, Premier Li Keqiang chaired a forum on deepening SOE reform, which was attended by officials from the SASAC and the leaders of some central and local SOEs. Premier Li's speech touched upon issues such as the functioning of SOEs, the adjustment of the economic structure, reform challenges, and innovation.

Sources: <http://www.sasac.gov.cn/n85881/n85921/c2051975/content.html>  
<http://www.sasac.gov.cn/n85881/n85921/c2051943/content.html>  
<http://www.sasac.gov.cn/n85881/n85901/c2060930/content.html>

## **2. The State Council issues opinion on developing mixed ownership SOE reform**

On 23 September 2015, the State Council issued an opinion on developing mixed ownership reform of SOEs. The opinions are aimed at advancing mixed ownership reform, promoting the common development of various forms of ownership, and deepening SOE reform. According to the opinion, different levels and categories of SOEs will be impacted by the reform. The opinion also states that a sound corporate governance mechanism and operational rules should be established for mixed ownership SOEs. Local governments are required to support mixed ownership reform of SOEs.

Source: <http://www.sasac.gov.cn/n85881/n85921/c2111460/content.html>

## **5. Other News/Media Comments**

### **1. The National Copyright Trade Center Alliance established**

The establishment of the National Copyright Trade Center Alliance was announced on 28 October 2015 by 12 national copyright trade centers in China. This alliance will focus on strengthening the protection and operation of copyright, sharing resources, and expanding financing channels to build a national and international system for copyright trading.

Source: <http://www.ncac.gov.cn/chinacopyright/contents/518/267430.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

### 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.