

China Competition Bulletin

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

中国竞争简报

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

Edition 46: March 2017

Highlights

The revision of the Anti-Unfair Competition Law (AUCL) is in its final stage, as the draft amendment is now being reviewed by the Standing Committee of the National People's Congress. Drafts of implementing regulations—the antitrust guideline on abuse of intellectual property rights (IPRs) and a guideline for the price-related conduct of industry associations—were also released by the competition authorities for public comment.

The National Development and Reform Commission (NDRC) and the State Administration for Industry and Commerce (SAIC) have been active in the first quarter of 2017. A number of decisions relating to antitrust investigations in the telecommunications, water, gas, electricity, pharmaceutical, motor vehicle inspection, fireworks and firecracker, education, concrete, and tourism industries were released. In particular, the NDRC and its local offices issued 4 decisions relating to administrative monopoly conduct.

1. Laws and Policies

1. Public comments solicited by the NPC on the revised draft AUCL amendment

On 26 February 2017, the National People's Congress (NPC), China's legislature, released a revised draft of the AUCL amendment for public comment. The period for soliciting public comments ended on 25 March 2017.

The revised draft contains important revisions to the 24-year old AUCL, including proposed revisions that have implications for the antitrust community. The first notable revision is that this draft adds a catch-all clause for yet to be defined types of unfair competition conduct. Article 15 states that, if a type of conduct is likely to seriously disrupt the order of competition but is not expressly outlawed by the AUCL or other rules, the SAIC may initiate an investigation and seek approval from the State Council. If the State Council approves, the SAIC can designate such conduct as unlawful unfair competition conduct.

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, Melbourne Law School, University
of Melbourne, Australia
wendy.ng@unimelb.edu.au

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

In this edition

1. Laws and Policies	1
2. Cases	3
3. News of the Anti-Monopoly Enforcement Agencies and the Courts	10
4. Central and Local Government News	12
5. News of State-Owned Enterprises	13

The second significant change is the reformulation of the provision that applies specifically to unfair competition conduct in the Internet industry. Article 14 prohibits Internet players from influencing user choice or interfering with the normal operations of other companies through technological means. Such conduct, which occurs in relation to Internet products or services that are lawfully provided by other companies, includes inserting links to force a hyperlink jump to a specific target; misleading, deceiving, or forcing users to modify, close or uninstall those products or services; interfering with or destroying their normal operation; and creating incompatibilities.

The third main revision is the removal of the clause on abuses of a “relatively advantageous position.” That clause was present in an earlier version of the AUCL draft amendment, which the State Council had released in February 2016 for public comment (and discussed in the January/February 2016 edition of this bulletin). That clause prohibited companies from abusing their relatively advantageous position without justification, by, for instance, restricting its trading partners’ choice of business partners, requiring its trading partners to buy designated products, or unreasonably requiring its trading partners to provide economic benefits. However, this clause drew much controversy during the earlier public comment period. Perhaps as a result of the negative feedback from certain stakeholders, this clause was deleted from the new draft.

Source: http://www.npc.gov.cn/npc/flcazqyj/2017-02/26/content_2019634.htm

2. MOFCOM releases draft guidelines on abuses of IPRs for public comment

On 23 March 2017, the Anti-Monopoly Bureau at the Ministry of Commerce (MOFCOM) released a draft antitrust guideline on the abuse of IPRs for public consultation.

This draft antitrust guideline on abuse of IPRs is one of the 6 antitrust guidelines that are being prepared for adoption by the Anti-Monopoly Commission (AMC). It consolidates the separate drafts on the same topic that were prepared previously by various government agencies, in particular, the NDRC and the SAIC (which were reported in the January/February 2016 edition of this bulletin).

This draft provides guidance for the application of the Anti-Monopoly Law (AML) to abuses of IPRs. The draft puts forward a number of basic principles and methodological framework for analysis. It also looks at different types of potential antitrust problems, following the same structure of the AML: monopoly agreements, abuse of a dominant market position, and anti-competitive mergers involving IPRs. However, it does not contain guidance on administrative monopolies involving abuses of IPRs. The draft guideline also contains guidance on specific IPR-related conduct such as the setting of technology standards, enforcement of standard essential patents, patent pools, and copyright collecting societies.

The consultation period ended on 21 April 2017. After finalising this guideline, the MOFCOM will submit it to the AMC for approval and adoption, however the expected date for such adoption is not yet publicly known.

Source: <http://flj.mofcom.gov.cn/article/zcfb/201703/20170302539418.shtml>

3. Stakeholder consultation on draft guidelines for antitrust issues in industry associations

On 24 March 2017, the NDRC released a draft guideline on the price-related conduct of industry associations to seek input from interested stakeholders. The consultation period ended on 24 April 2017.

A number of the antitrust cases taken by the competition authorities have involved the conduct of industry associations, whether directly engaging in or facilitating its members’ anticompetitive conduct. In particular, self-discipline conduct by industry associations, which effectively amounted to hardcore cartel activity, was a focus of many of those cases. This guideline aims to provide industry associations with guidance on when their price-related conduct might breach the AML and other laws, and encourages industry associations to play an active role to ensure fair competition and protect consumer interests.

The draft guideline puts forward some benchmarks and rules which industry associations should observe to avoid risks under the AML. These cover situations where industry associations: sell products or provide paid services; act to protect the legitimate interests of its members and the industry; engage in self-discipline

activities; support the “going out” activities of its members or the industry; participate in the mediation of price disputes; and release price information to its members, other businesses in the industry, or the public. The draft guideline also provides industry associations with a list of price-related conduct where they run a high risk of non-compliance with the AML and other laws and regulations.

Source: http://www.ndrc.gov.cn/yjzx/yjzx_add.jsp?SiteId=129

2. Cases

1. NDRC bureaus in Jilin and Liaoning fine telecommunications companies for engaging in anticompetitive conduct in broadband supply services

The NDRC announced 3 recent cases taken by its local bureaus in Jilin and Liaoning Province involving anticompetitive conduct in the supply of broadband services.

The Jilin Price Bureau found that Jihua Group Information Network Technology, which is a subsidiary of the Jihua Group, had breached Article 17(1)(5) of the AML as it abused its dominance by imposing unreasonable conditions on its broadband supply services. The company is the only broadband service provider in the district, and it charged broadband customers that did not also use its fixed-line services a RMB 5/month security fee, otherwise it would not provide the broadband service. The company had illegal gains of over RMB 528,000 confiscated and was fined nearly RMB 300,000 (representing 5% of its previous years’ revenue in the relevant market), resulting in total sanctions of over RMB 823,000.

The Jilin Price Bureau also sanctioned China Unicom’s branch in Changchun and Changchun FAW Communication Technology for price fixing. The parties signed a cooperation agreement, under which the Changchun branch used Changchun FAW’s network to supply broadband services in a designated district, and they agreed to adopt the same prices. The Jilin Price Bureau determined that the parties had breached Article 13(1)(1) of the AML, and imposed a total fine of nearly RMB 28,000 (representing 5% of the previous year’s revenue in the relevant market).

The Liaoning Price Bureau investigated China Unicom’s branch in Dandong for abuse of dominance and resale price maintenance. The Dandong branch had tied the sale of cable broadband services to landline telephone services, which breached Article 17(1)(5) of the AML. It also found that the Dandong branch violated Article 14(1) of the AML. It signed a cooperation agreement with Dandong Cable TV whereby it fixed the product types and prices of cable broadband services that Dandong Cable TV sold to households. The Liaoning Price Bureau fined China Unicom’s Dandong branch just over RMB 670,000 (1% of the previous years’ revenue in the relevant market), and it considered the corrective measures the Dandong branch voluntarily took during the investigation.

Source: http://ijs.ndrc.gov.cn/gzdt/201703/t20170316_841142.html

2. Price bureaus in Shanxi and Guizhou fine companies for price fixing of motor vehicle inspection fees

The NDRC’s local offices in Shanxi and Guizhou each took cases relating to price fixing in motor vehicle inspection fees.

In Chanzhi City in Shanxi Province, 18 motor vehicle inspection businesses jointly increased inspection fees on 15 June 2015. The Shanxi Development and Reform Commission found that they had agreed on the fee levels, standards, and timing of the price increases at a meeting. It imposed fines of between 3–8% of previous year’s sales revenue, depending on each business’s role in the making and implementation of the price fixing agreement and the nature of their anticompetitive conduct, resulting in a total fine of nearly RMB 1.32 million.

Similarly, the Guizhou Development and Reform Commission fined motor vehicle inspection businesses operating in Bijie City a total of nearly RMB 277,000 (ranging from 1–6% of previous year’s sales revenue). Fines were determined according to the role of each business in the making and implementation of the

agreement and the nature and duration of the conduct. From December 2015, 5 motor vehicle inspection businesses discussed unifying motor vehicle inspection fees on many occasions. They signed an agreement on 1 February 2016, in which they unified fees and adopted penalty measures for non-compliance.

Source: http://jis.ndrc.gov.cn/fjgld/201701/t20170104_834259.html

3. Fireworks and firecracker wholesalers in Henan fined for market allocation

On 16 December 2016, the Henan Administration for Industry and Commerce (Henan AIC) issued decisions against 5 fireworks and firecrackers wholesalers in Henan for market sharing. The decisions were made public on 7 February 2017.

The Henan AIC launched an investigation into the companies in July 2015 after receiving authorisation from the SAIC. The Henan AIC found that the 5 companies entered into a joint operation agreement in March 2015. Under the joint operation agreement, the 5 companies set up a joint distribution centre to cooperate on, manage, and unify purchases, storage, sales, and safety management. The joint distribution centre also set a unified price, and retailers were required to strictly comply with the pricing guidelines issued by the joint distribution centre. The agreement also provided for penalties for non-compliance, and the 5 companies agreed to dividend proportionally at the end of an agreement year. As the joint distribution centre had no legal personality, Gushi Zhaoxiang Fireworks carried out the joint distribution centre's operations, while the other 4 companies stopped their business activities.

The Henan AIC determined that the joint operation agreement among the 5 companies was a market allocation agreement, which is prohibited under Article 13(1)(3) of the AML. As the companies actively cooperated with the investigation and stopped their conduct before the adoption of the decision, the Henan AIC agreed to impose relatively light penalties. Gushi Zhaoxiang Fireworks was fined 2% of its revenue in the previous year, while the other four companies were each fined 1% of their previous year's revenue. The companies' illegal profits were also confiscated. In total, sanctions of over RMB 1.5 million were imposed.

Source: http://www.saic.gov.cn/fldyfbzdiz/jzzfgq/201703/t20170309_232295.html

4. Unreasonable conditions by water company challenged in Jiangsu

On 30 December 2016, the Jiangsu Administration for Industry and Commerce (Jiangsu AIC) fined Wujiang Huayan Water RMB 21.43 million for abuse of dominance. The SAIC published its decision on 9 March 2017.

Since 2014 the local AIC had received several complaints from real estate developers based in Wujiang, Jiangsu, alleging that Huayan Water had violated the AML by restricting their choice of supplier for project design, construction services, and materials for residential building water supply. On 23 June 2015, the Jiangsu AIC started its formal investigation after receiving permission from the SAIC in Beijing.

The Jiangsu AIC defined the relevant market to be the public water supply service market in Wujiang, and determined that Huayan Water had a dominant position because it was the sole water supplier in Wujiang. It found that Huayan Water had attached unreasonable trading conditions when dealing with real estate developers without valid reasons, harming fair market competition. In particular, Huayan Water had expressly or implicitly required real estate developers to contract with a designated water supply project construction company which was Huayan Water's wholly-owned subsidiary. Real estate developers were also required to use the water supply construction materials and equipment supplied by Huayan Water or certain manufacturers, or of certain brands.

As a result, the Jiangsu AIC found that Huayan Water had restricted and eliminated fair competition in the water supply construction and equipment market, harmed the legitimate interests of its trading partners by restricting their freedom of choice, and increased the burdens of businesses and consumers. It concluded that Huayan Water's conduct constituted an abuse of market dominance in violation of Article 17(1)(5) of the AML. The Jiangsu AIC ordered Huayan Water to discontinue its illegal conduct and imposed a fine of more than RMB 21.4 million, representing 7% of the company's 2014 sales revenues. In determining the level of fine, the

Jiangsu AIC considered that Huayan Water did not correctly understand the illegal nature of its conduct; nor did it express an intention to rectify the conduct.

Source: http://www.saic.gov.cn/fldyfbzdiz/jzzfgg/201703/t20170309_232296.html

5. Hubei AIC sanctions methyl salicylate exclusive distributor for abuse of dominance

On 11 January 2017, the Hubei Administration for Industry and Commerce (Hubei AIC) fined Wuhan Xinxing Jingying Pharmaceutical for imposing unreasonable conditions and abusing its dominance in breach of Article 17(1)(5) of the AML. Over RMB 2.2 million in economic sanctions were imposed.

The Hubei AIC found that Xinxing Jingying has a dominant position in the relevant market, which is medicinal methyl salicylate active pharmaceutical ingredient (methyl salicylate API) in China. It has a 100% market share, as it is the exclusive distributor nationally for the 2 active producers of methyl salicylate API. It also has the ability to control the sales market, because it can determine whether to supply and the price and terms of such supply. There are high barriers to entry due to legal requirements and the large capital and research and development outlay required, and domestic users of methyl salicylate API are completely dependent on Xinxing Jingying for supply.

In 2014, Xinxing Jingying organised for several of its employees to arrange the exclusive distribution and sales of methyl salicylate API, using Xinxing Jingying's name or the names of other companies. Xinxing Jingying negotiated, and was successfully awarded, exclusive distribution agreements with the 2 methyl salicylate API producers under the names of Wuhan HH Pharmaceutical and Henan HF Pharmaceutical. Xinxing Jingying and its controlled entities undertook a series of intermediate transactions whereby they increased the price of methyl salicylate API, which was passed on to its customers. As a result of these actions, the price increased from around RMB 20,000/tonne to RMB 60,000–150,000/tonne. For customers that stopped purchasing methyl salicylate API, Xinxing Jingying reported those who it believed had run out of their supply to the local drug authorities for using fake methyl salicylate. It also required its customers to provide production records, and conditioned supply on the payment of deposit and the appointment of it as the exclusive distributor of the final product.

The Hubei AIC determined that Xinxing Jingying had imposed trading conditions outside the realm of normal business transactions and without justification. By doing so, Xinxing Jingying had distorted competition order in the methyl salicylate API and final products markets, greatly increased the burden of the final products manufacturers, and harmed consumers' interests. Illegal gains of RMB 1.8369 million were confiscated, and a fine of over RMB 372,000, representing 3% of 2015 sales, was imposed. The Hubei AIC took into account Xinxing Jingying's cooperation with the investigation and taking of measures to reduce the harmful consequences of the conduct.

Source: http://www.saic.gov.cn/fldyfbzdiz/jzzfgg/201703/t20170309_232297.html

6. Shandong AIC suspends abuse of dominance investigation into State Grid's local branch in Yantai, Shandong

On 26 December 2016, the Shandong Administration for Industry and Commerce (Shandong AIC) decided to suspend its abuse of dominance investigation into the State Grid's branch in Muping District in Yantai in Shandong Province. The Shandong AIC had begun its investigation on 18 September 2014 after receiving authorisation from the SAIC.

The Muping branch is the only electricity supply company in Muping District in Yantai. From September 2012 to September 2014, when organising power supply and distribution construction works for new residential areas, it handed the construction of 9 new residential area temporary power supply projects over to its affiliate. On 2 June 2016, the Muping branch submitted a request to the Shandong AIC to suspend the investigation, and it made commitments to engage in self-examination and rectification, conduct its business according to law, participate in fair competition, and organise compliance training.

The Shandong AIC decided to suspend its investigation, taking into account the Muping branch's cooperation with the investigation, understanding of the problem, formulation and implementation of corrective measures, and prompt elimination of the adverse effects of the conduct. The Muping branch is required to fulfil its commitments by 28 February 2017, and report on its compliance to the Shandong AIC.

Source: http://www.saic.gov.cn/fldyfbzdiz/jzzfgg/201703/t20170309_232294.html

7. Ningxia AIC terminates abuse of dominance investigations of Ningxia branches of China Tietong, China Unicom, and China Telecom

The Administration for Industry and Commerce in the Ningxia Hui Autonomous Region (Ningxia AIC) decided to terminate its investigation of the Ningxia branches of China Tietong, China Unicom, and China Telecom on 9 December 2016.

In June 2013, the Ningxia AIC began investigating the 3 telecommunications companies for tying the sale of landline telephone services to the provision of Internet services. It had decided to suspend its investigation in May 2015, following the provision of commitments by the companies (reported in the May/June edition of this bulletin). The parties had committed to rectifying their conduct by (1) engaging in company-wide self-correction, providing sales staff with appropriate training, stopping the tying conduct, (2) publicising customers' choices through various media outlets, business centres, and other publicity channels, and (3) ensuring that requests to cancel the tied landline services are properly handled. In deciding to terminate the investigation, the Ningxia AIC determined that the parties had fulfilled their commitments.

Sources: http://www.saic.gov.cn/fldyfbzdiz/jzzfgg/201703/t20170309_232298.html
http://www.saic.gov.cn/fldyfbzdiz/jzzfgg/201703/t20170309_232299.html
http://www.saic.gov.cn/fldyfbzdiz/jzzfgg/201703/t20170309_232300.html

8. Inner Mongolia AIC terminates investigation into anticompetitive conduct of 3 LPG companies

On 14 December 2016, the Inner Mongolia Administration for Industry and Commerce (Inner Mongolia AIC) terminated its investigation of 3 liquefied petroleum gas (LPG) suppliers operating in Ordos.

On 20 November 2013, the 3 LPG companies jointly appointed Niu Ben as their sole distributor, in exchange for Niu paying each company a monthly fee of RMB 60,000. This resulted in only 1 LPG business operating in the Dongsheng district of Ordos, and Niu Ben having a position of dominance in the Dongsheng district LPG market. On 15 April 2015, Niu and the 3 companies agreed to increase prices from RMB 80/bottle to RMB 100/bottle. Niu also refused to accept old bottle containers from the companies' customers, and conditioned the supply of LPG on the purchase of its bottle containers.

After the Inner Mongolia AIC began its investigation on 10 August 2015, the 3 companies lowered the price back to RMB 80/RMB and admitted its conduct in appointing Niu as the sole distributor. They also submitted a request to the Inner Mongolia AIC to suspend the investigation, committing to cancelling the distributorship and returning to running their businesses independently, strictly implementing the price standards adopted by the local price authorities, and allowing the continued use of existing bottle containers after they pass inspection. The Inner Mongolia AIC granted the suspension request, taking into account the parties' cooperation during the investigation, their attitude towards the illegal conduct, and the limited impact and short duration of the conduct.

Recently, the 3 companies submitted a request for the Inner Mongolia AIC to terminate the investigation. The Inner Mongolia AIC decided to grant the application because the 3 companies had fulfilled their commitments and no additional anticompetitive conduct was discovered.

Source: http://www.saic.gov.cn/fldyfbzdiz/jzzfgg/201703/t20170328_261350.html

9. Twelve provincial governments rectify conduct that designated suppliers of electricity supply equipment

The NDRC found that 12 provincial governments had adopted policies that appointed specific electricity suppliers to construct electricity supply equipment in new residential areas and to unify fees. In response to the NDRC's investigation and recommendation to comply with the AML, the 12 provincial governments adopted corrective measures, which included ceasing implementation, revising, or repealing of the relevant documents, or liberalising fees.

Sources: http://www.sdpc.gov.cn/gzdt/201612/t20161229_833296.html

http://jjs.ndrc.gov.cn/gzdt/201702/t20170204_837230.html

10. Local government engaged in administrative monopoly conduct by organising and facilitating price fixing among Huangpu River cruise operators

The Shanghai Municipal Transportation Commission (SMTC) was held to have engaged in administrative monopoly conduct by organising, guiding, coordinating, and protecting the price fixing conduct of cruise operators along the Huangpu River.

The NDRC and Shanghai Development and Reform Commission found that Huangpu River cruise operators had engaged in price fixing since 2009, and that the SMTC had facilitated that conduct in 3 ways:

- *Guiding the formation of a public platform for cruise operators to agree on prices.* The SMTC supported and encouraged administrative measures that unified ticket prices, price adjustments, and administration. It also helped to ensure that all cruise operators complied with the public platform by adopting measures, such as suspending ships, for those operators that did not comply
- *Organising and guiding the making of the monopoly agreement.* The SMTC organised meetings where the cruise operators discussed and agreed on prices and participated in meetings organised by the industry association. Its price recording mechanism, whereby the industry association reported fees to the SMTC, acted to audit and approve the planned price increases
- *Supervised the implementation of the monopoly agreement.* The SMTC issued administrative enforcement measures and held regular meetings to supervise and require the implementation of the agreement

After the investigation, the SMTC admitted that it did not properly understand the relevant laws and policies and stated that it would voluntarily rectify its conduct. It would clearly provide that individual cruise operators should determine their own prices, give cruise operators the choice of whether to participate on the public platform, and limit public platform sales to individually determined prices. It will also not request or accept the industry association's price adjustments.

Source: http://jjs.ndrc.gov.cn/gzdt/201612/t20161229_833265.html

11. Abuse of administrative power found in the Beijing concrete industry

The NDRC and the Beijing Development and Reform Commission investigated the concrete industry management practices of the Beijing Municipal Commission of Housing and Urban-Rural Development (Beijing Development Commission), in particular its quality control price policy.

On 24 December 2014, the Beijing Development Commission published a notice stating that would publish quality control prices of various concrete brands from 1 February 2015 onwards. The quality control prices were first determined by the Beijing Concrete Industry Association and then confirmed by the Beijing Development Commission. In June 2016, the industry association held meetings to discuss prices and measures to stabilise the concrete market. These meetings resulted in the adoption of a self-discipline standard, which required that, from 1 July 2016 onwards, the price of newly-entered ready-mix concrete contracts must not be lower than the quality control price published by the Beijing Commission and Industry

Association's website on 5 May 2016, and existing contracts that did not meet this requirement must be revised by 15 July 2016. The industry association also organised for some of its members to form a small group, which supervised the implementation of the self-discipline standard, and businesses that did not implement the quality control price would have their membership of the industry association revoked. On 26 July 2016, the Beijing Development Commission organised a seminar, attended by concrete and construction businesses, to inform them about the implementation of the quality control price, to guide businesses to reach an understanding, and to define the industry-wide average cost.

In finding that the Beijing Development Commission had breached Articles 8, 32, and 37 of the AML, the NDRC recognised that ensuring concrete quality is very important and that it is reasonable for the Beijing Development Commission to use price signals to warn construction businesses of concrete quality. However, the Beijing Development Commission's conduct went beyond the needs of warning and reasonableness, because it interferes with the ability of businesses to determine their own prices and restricts competition in the concrete market.

After the NDRC's investigation, the Beijing Development Commission realised that its quality control price policy had guided businesses to make and implement a price fixing agreement, contrary to the AML. It stated that it would actively rectify and correct the situation, and on 19 October 2016, it repealed the quality control price notice and requested that ready-mix concrete producers not sell at below-cost with the objective of eliminating competition.

Source: http://jjs.ndrc.gov.cn/gzdt/201612/t20161229_833264.html

12. Shenzhen Municipal Education Bureau abused its administrative power in procurement of school supplies

The NDRC and the Guangdong Development and Reform Commission (Guangdong DRC) found that the Shenzhen Municipal Education Bureau (SMEB) violated Articles 8, 34, and 36 of the AML in its procurement of student supplies in 2011 and 2014.

First, the SMEB guided businesses to make and implement a price-fixing agreement. In the announcement of the 2011 tender, the SMEB stipulated the estimated cost price and required that bidders not go below that cost price in their submissions. In the 2014 tender, the SMEB requested that bidders submit bid prices that were not higher than the 2011 price, and that bidders should apply the same discount rate to all products to calculate their bid price. The NDRC and Guangdong DRC found that this limited the highest bid price and restricted the ability of bidders to determine their own prices. Second, the SMEB stipulated unreasonable conditions relating to the qualification and review of bidders that favoured local businesses and disadvantaged out-of-region businesses. For example, in the 2011 tender, bidders had to be registered businesses in Shenzhen or have a registered branch in Shenzhen that had relevant fire, environmental protection, and other permits, and points were linked to the bidder's Shenzhen business tax amount and experience with providing local students with services. Similarly, the 2014 tender rules awarded points based on the amount of tax paid in Shenzhen in the previous 3 years.

In response, the SMEB committed to accepting the NDRC's recommendation, complying with the AML and relevant laws and regulations, not announcing guidance price before tenders, revising student supplies management measures, allowing the market to determine prices, and formulating tender documents that comply with the government's requirements.

Source: http://jjs.ndrc.gov.cn/gzdt/201612/t20161229_833266.html

13. Shandong Price Bureau fines pharmaceutical company for obstructing antitrust investigation

The NDRC recently announced that, on 25 December 2016, the Shandong Price Bureau imposed a fine of RMB 120,000 on Weifang Longshunhe Pharmaceutical for obstructing an investigation under the AML. The NDRC and the Shandong Price Bureau was jointly investigating Weifang Longshunhe Pharmaceutical for potentially engaging in price-related anticompetitive conduct.

The incident in question occurred during a visit made by officials to the premises of Weifang Longshunhe Pharmaceutical's premises on the morning of 10 August 2016 to gather evidence. Officials had gathered USBs as evidence, but an employee threw them out the door, and employees blocked efforts by the officials to retrieve the USBs.

In determining the fine, the NDRC and the Shandong Price Bureau took into account Weifang Longshunhe Pharmaceutical's subsequent cooperation with the investigation and apology made by the employees in question.

Source: http://www.sdpc.gov.cn/gzdt/201702/t20170213_837623.html

14. Administrative reconsideration and administrative litigation of Shaanxi Price Bureau's decision sanctioning motor vehicle inspection fees cartel unsuccessful

The NDRC announced that applications for administrative reconsideration and administrative litigation of the Shaanxi Price Bureau's decision in April 2016 relating to price fixing in the motor vehicle inspection fee sector have been unsuccessful. The Shaanxi Price Bureau's decision, which was reported in the March/April 2016 edition of this bulletin, had found that the industry association and 31 motor vehicle inspection businesses had engaged in price fixing in violation of Article 13(1) of the AML.

In May 2016, one of the sanctioned businesses applied to the Shaanxi Provincial People's Government for administrative reconsideration of the decision and the revocation of penalties. On 9 May 2016, the Shaanxi Provincial People's Government decided that the Shaanxi Price Bureau's decision should stand.

In September 2016, another sanctioned business initiated administrative proceedings before the Xi'an Railway Transport Court and requested the withdrawal of the Shaanxi Price Bureau's decision. On 21 December 2016, the court dismissed the plaintiff's application. It held that the Shaanxi Price Bureau's decision was based on clear facts, the accurate application of relevant laws and regulations, and in compliance with legal procedures.

Source: http://jjs.ndrc.gov.cn/fjgld/201612/t20161226_832626.html

15. SPC dismissed retrial application of China Mobile abuse of dominance judgment

On 28 November 2016, the Supreme People's Court (SPC) dismissed a petition for retrial brought by Mr Tong Hua against the Shanghai branch of China Mobile for its alleged abuse of market dominance. This case had already been before the Shanghai Intermediate People's Court twice and the Shanghai High People's Court on appeal. This decision was released by the SPC on 1 March 2017.

Mr Tong had a prepaid mobile phone subscription with Shanghai Mobile. Shanghai Mobile shut down the service because of non-payment and suspended his mobile phone number within the default 90-day retention period. The retention period is the period of time during which customers have the right to use the mobile phone number. When Mr Tong requested that Shanghai Mobile recover the phone number and restart its service, Shanghai Mobile requested that Mr Tong first complete the real-name registration procedure, as required by law. After completion of that procedure, Shanghai Mobile allowed the recovery of the phone number, but within a shortened retention period of 60 days. Mr Tong argued that, by cancelling his phone number during the retention period and reducing the retention period from 90 to 60 days, Shanghai Mobile's conduct constituted refusal to deal and differential treatment without valid reasons in breach of the AML.

The SPC held that Shanghai Mobile had not refused to trade with Mr Tong without valid reason because it had resumed the service associated with the phone number in a timely manner after real-name registration. The court also found that, apart from China Mobile, other major telecommunications carriers such as China Unicom and China Telecom provide a wide selection of services at various prices for customers, with differences in the methods, time, and standards of payment. It also found that pre- and post-paid customers were not in similar positions, and that Shanghai Mobile had not unreasonably applied differential prices and other terms to Mr Tong Hua. Further, in light of the fact that other telecommunications companies provide retention periods ranging from 60 to 90 days, the SPC decided that Shanghai Mobile's reduction of the retention period for specific customers would not affect China Mobile's competitors. As a result, the court held that Shanghai Mobile's conduct did not exclude or restrain competition, and dismissed the retrial application.

Source: <http://wenshu.court.gov.cn/content/content?DocID=4b45d27d-d652-4dda-89bd-a729010f2c46&KeyWord=%E7%AB%A5%E5%8D%8E>

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

1. MOFCOM reports on 2016 activities

On 11 January 2017, the MOFCOM provided a summary of its 2016 antitrust activities.

In 2016, the MOFCOM received 378 merger notifications, initiated 360 merger reviews, and completed 395 merger reviews, representing an increase of 7.4%, 6.5%, and 19%, respectively, from 2015. It conditionally approved 2 mergers (AB InBev/SAB Miller and Abbott Laboratories/St Jude Medical) and imposed sanctions in 5 cases where merging parties failed to notify their mergers for review. The MOFCOM also reports that 324 reviews were concluded within 30 days (Phase 1), which constitutes 82% of all cases and is an increase of 8% from 2015. Simple merger review cases constituted 76% of all merger reviews, and 98.6% of those cases were cleared in Phase 1. It also cooperated with US and European competition authorities on the review of more than 10 cross-border mergers, and provided guidance to North China Pharmaceutical in its 11-year vitamin C antitrust litigation proceedings in the United States. On the policy front, the MOFCOM is currently studying the revision of the AML, revising the *Measure on Review of Concentrations of Undertakings*, and working on improving merger notification standards and review procedures.

The MOFCOM also acts as the office for the State Council Anti-Monopoly Commission. In that role, it is working on finishing its research on evaluating market competition in the electricity and Internet industries, and collating market competition data on 6 industries (including new steel) to add to its existing data for 41 industries.

Source: <http://www.mofcom.gov.cn/article/ae/ai/201701/20170102499312.shtml>

2. MOFCOM releases list of unconditionally cleared mergers for the third quarter of 2016

On 5 April 2017, the MOFCOM released a list of 71 mergers that it unconditionally cleared in the first quarter of 2017.

Source: <http://fldj.mofcom.gov.cn/article/zcfb/201704/20170402552108.shtml>

3. Update on the MOFCOM's activities

In February and March 2017, Wu Zhenguo, Director-General of the MOFCOM Anti-Monopoly Bureau, met with businesses on several occasions to discuss antitrust issues. He met with the Investment Company Working Committee of the China Association of Enterprises with Foreign Investment, Chairman and Chief Executive Officer of CITIC Capital, and Chief Strategy Office of the Shun Feng Group.

The MOFCOM Anti-Monopoly Bureau took part in the 14th China-EU Competition Policy Week, which was held in Beijing and Shenzhen from 20–24 March 2017. It jointly organised a seminar with the European Commission Directorate-General for Competition on mergers.

From 12–18 March 2017, Han Chunlin, Deputy Director of the MOFCOM Anti-Monopoly Bureau, led a delegation to Spain and Germany. He met with the Spanish and German competition authorities, businesses, and law firms, and participated in the 18th International Competition Conference. Separately, on 29 March 2017, Deputy Director Han met with representatives from the EU Delegation to China. He also led a delegation to visit Shanghai and Hangzhou in early March 2017 to carry out research on the Internet industry.

Sources: <http://fldj.mofcom.gov.cn/article/xxfb/201703/20170302525173.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201703/20170302534730.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201703/20170302534731.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201703/20170302539870.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201703/20170302539867.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201703/20170302543726.shtml>

<http://fldj.mofcom.gov.cn/article/xxfb/201703/20170302528180.shtml>

4. Update on the NDRC's activities

The 2017 National Price Work Conference was held in Beijing from 15–16 January 2017. During the conference, the NDRC claimed that its activities saved businesses RMB 250 billion in operating costs and charges in 2016. The NDRC's 6 key tasks for 2017 are price stabilisation, deepening and promoting price reform in key sectors, systematically reduce fee burdens, comprehensively promote the fair competition review system, strengthening price supervision and AML enforcement, and communicating news.

The NDRC Price Supervision and Anti-Monopoly Bureau has held a few seminars to discuss competition policy issues. On 22 February 2017, a seminar was held where the research results of 4 teams were presented, and on 24–25 March 2017, the interim results of the research of 2 teams of economists were presented. It also held a seminar on 13 February 2017 to listen to the suggestions and views of experts on the State Council Anti-Monopoly Commission Expert Advisory Group. It also participated in the 14th China-EU Competition Policy Week, where it discussed how to improve and implement the policy review and evaluation mechanism and the competition issues in the financial services industry and those relating to industry associations. It also held a “remind and warn” meeting in Beijing on 9 January 2017 for the home appliances industry to discuss price laws and regulations. Representatives from major Chinese manufacturers of air conditioners, refrigerators, televisions, washing machines, small appliances, and e-commerce platforms attended.

From 1–4 March 2017, Zhang Handong, Director-General of the NDRC Price Supervision and Anti-Monopoly Bureau, led a delegation to Singapore. He visited the Competition Commission of Singapore and participated in the 6th Annual Asia-Pacific Law Leaders Forum. Li Qing, Deputy Director-General of the NDRC Price Supervision and Anti-Monopoly Bureau, met with representatives from the British Embassy in China and the UK Prosperity Fund on 16 January 2017 and discussed competition policy cooperation. She met with a representative from the Advanced Medical Technology Association 2 days later.

Sources: http://zys.ndrc.gov.cn/xwfb/201701/t20170119_835734.html

http://ijs.ndrc.gov.cn/gzdt/201703/t20170328_842306.html

http://ijs.ndrc.gov.cn/gzdt/201702/t20170224_839149.html

http://ijs.ndrc.gov.cn/gzdt/201702/t20170214_837760.html

http://ijs.ndrc.gov.cn/gzdt/201701/t20170111_834826.html

http://jis.ndrc.gov.cn/gzdt/201703/t20170322_841741.html
http://jis.ndrc.gov.cn/gzdt/201703/t20170307_840539.html
http://jis.ndrc.gov.cn/gzdt/201701/t20170117_835307.html
http://jis.ndrc.gov.cn/gzdt/201701/t20170119_835591.html

5. Update on the SAIC's activities

The SAIC Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau participated in the 14th China-EU Competition Policy Week, and discussed analytical framework for vertical anticompetitive agreements and reasonable justifications and defences for tying and bundling in the IT industry. It also participated in a conference on antitrust enforcement in the global context held by University of Southern California Gould School of Law on 13–14 January 2017.

The SAIC also held a 10-day national AML enforcement training course, beginning on 21 March 2017.

The SAIC Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau received a few visitors in January to March 2017. It received a research group from Tsinghua University, and representatives from Qualcomm and Apple.

The SAIC Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau participated in SCNPC's group deliberations of the revised draft AUCL on 24 February 2017.

Sources: http://www.saic.gov.cn/fldyfbzdjz/gzdt/201701/t20170111_228608.html
http://www.saic.gov.cn/fldyfbzdjz/gzdt/201701/t20170117_228609.html
http://www.saic.gov.cn/fldyfbzdjz/gzdt/201703/t20170324_261360.html
http://www.saic.gov.cn/fldyfbzdjz/gzdt/201701/t20170110_228607.html
http://www.saic.gov.cn/fldyfbzdjz/gjil/201702/t20170213_228614.html
http://www.saic.gov.cn/fldyfbzdjz/gjil/201703/t20170301_257486.html
http://www.saic.gov.cn/fldyfbzdjz/gzdt/201702/t20170224_257645.html

4. Central and Local Government News

1. State Council establishes joint inter-ministerial meeting system for fair competition review

On 22 December 2016, the State Council agreed to the NDRC's application to establish a joint inter-ministerial meeting system to strengthen the implementation of the fair competition review system. It will be led by the NDRC, and comprise of 28 government departments and organisations. Its main functions are to coordinate and promote fair competition review work, strengthen communication and cooperation between various departments and regions, study and formulate detailed rules for the fair competition review system, and other matters as directed by the State Council.

The first meeting of the liaisons of the inter-ministry joint meeting was held by the NDRC Price Supervision and Anti-Monopoly Bureau on 7 March 2017.

Sources: http://jis.ndrc.gov.cn/gzdt/201701/t20170124_836582.html
http://jis.ndrc.gov.cn/gzdt/201703/t20170307_840545.html

2. SPC releases 2 antitrust cases as guiding cases

On 16 March 2016, the Supreme People's Court released its 16th batch of guiding cases. Included in this batch of guiding cases are *Qihoo v Tencent* (on abuse of market dominance, monopoly, and relevant market) and *Wu Xiaoqin v Shaanxi Radio and Television Network* (on bundling, tying, monopoly, and market dominance).

Sources: <http://www.court.gov.cn/shenpan-xiangqing-37612.html>

<http://www.court.gov.cn/shenpan-xiangqing-37622.html>

5. News of State-Owned Enterprises

1. SASAC draws “red line” for central SOE investments

The State-owned Assets Supervision and Administration Commission (SASAC) revised and issued measures that clarify the investment direction, procedures, risk control, and accountability in domestic and overseas markets of state-owned enterprises (SOEs). The revised measures provide for the establishment of a negative list that sets out the categories of industries which are currently off-limits for SOE investments. In addition, SOEs must work together with other companies if they wish to invest in areas outside their field of specialisation. Due to different business scopes, all SOEs must establish their own negative lists as soon as possible to meet the relevant requirements in the measures.

Source: <http://www.sasac.gov.cn/n85881/n85901/c2525255/content.html>

2. SASAC sees potential for further SOE mergers and restructurings

At the annual meeting of central SOEs leaders held on 12 January 2017, SASAC Director Xiao Yaqing stated that in-depth restructuring of SOEs would be accelerated in 2017. Mergers and reorganisations at the enterprise group level will be advanced, overseas assets integration will be explored, specialised reorganisations will be carried forward, and central SOEs are encouraged to integrate businesses through equity cooperation and asset swaps by using advantaged leading enterprises and listed companies as platforms. Further, SOE reform policies will be deepened in 2017 to implement corporate joint-stock and mixed ownership reforms, and to take substantive steps to reform key industries such as the electricity, oil, gas, railway, civil aviation, telecommunications, and military industries.

Source: http://news.xinhuanet.com/finance/2017-01/13/c_129444453.htm

Major Acronyms

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

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.