Due to the general nature of its contents, 
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AUTHORITY

SAIC has Already Accepted 9 Anti-Monopoly Cases this Year

August 26, 2014

On August 26, 2014, Mr. Zhang Mao, the Minister of the State Administration for Industry and Commerce ("SAIC") made a presentation on the Provisional Regulations on Disclosure of Enterprise Information at the press conference held by the State Council Information Office. Minister Zhang said that as an antitrust authority, the SAIC mainly handles cases related to abuse of market dominance. Since the beginning of this year, the SAIC already accepted 9 anti-monopoly cases in total. Including the Microsoft case, the industries involved range from software, tobacco, telecom, insurance, tourism, public utilities, etc. There are a variety of entities involved in these cases, including state-owned enterprises, foreign-invested enterprises, domestic companies, and industry associations.

SAIC Continuing to Increase Anti-monopoly Law Enforcement

August 23, 2014

SAIC announced on August 22th that they will continue clearing pre-approval projects, simplifying residence registration process, and improving market exit mechanisms, as industrial and commercial registration systems have come into “phase II”. At the same time, they will not ease off on Anti-Monopoly Law ("AML") enforcement.

Reform of the registration system for registered capital has been persisted in full for
almost half a year, introduced by the head of SAIC, Minister Zhang Mao, and from March to July of this year the number of market entities increased obviously, which shows the reform has achieved initial outcome.

According to Minister Zhang, the number of newly registered market entities is 5,531,900, with year-on-year growth of 18.57% from March to July, with registered capital of 9.05 trillion Yuan with year-on-year growth of 58.61%.

As part of the reform of the industrial and commercial registration system, other system reforms are steadily progressing such as the Annual Enterprise Inspection changing to the Annual Publicity Report, and the practice of electronic business licenses and electronic registration throughout the entire process after the registration system for registered capital is implemented. Taking the new system of “certification before proof” as an example under the old system, before applying for a business license from the SAIC, an entity was required to have enough capital and to get an administrative license from the department in charge. But, the application for business licenses will have fewer and fewer requirements after these reforms.

Minister Zhang indicated that SAIC will steadily continue to reform from the “proof before certification” to the “certification before proof” model, accelerating to clear the projects to require the pre-approval in industrial and commercial registration jointly with Central Staffing Department, making two batches of lists this year of pre-approval projects which will be changed into examination and approval of rear from pre-approval for application of industrial and commercial registration.

There are 7 provinces who have not announced regulations on residence management, although they should be made public as soon as possible. SAIC will also research how to simplify the market exit mechanism, as some enterprises complain that it is even more difficult than applying to run a business, because of they have some problems such as debts and taxes to be needed to deal with.

Since the end of July, SAIC announced the progress of anti-monopoly investigation
against Microsoft. When it comes to market regulation reform, Minister Zhang said that SAIC will continue to increase AML Enforcement in sectors such as banking industry.

Minister Zhang summarized that SAIC will continue to carry out Enforcement of the AML and Anti-unfair Competition Law earnestly, investigate and deal with the relevant cases actively and steadily in order to promote the various market entities to get equal rights, opportunities and regulations.

**MOFCOM: All Companies are Equal Before Anti-Monopoly Law**

August 8, 2014

On August 9, 2014, Mr. Shen Danyang, spokesman of Ministry of Commerce (“MOFCOM”), said in response to recent probes into a number of foreign companies that Chinese and foreign companies are equal in front of China's AML.

According to Shen, these investigations target monopolistic practices in general and aim to promote fair competition and protect consumer interests. Both domestic and foreign companies must bear the due liabilities if they break the law. China’s probes into multinationals including Mercedes-Benz, Microsoft and U.S. chip maker Qualcomm have made headlines in the past few weeks. Under the AML, which came into force in 2008, enterprises involved in monopolies may be fined between 1 and 10 percent of their total sales of the previous year. Looking back at the past six years after the AML took effect, both domestic and foreign companies have been probed according to the law.

Shen said foreign-invested firms have played an active role in China’s social and economic development over the past three decades.” The Chinese government has
always been dedicated to creating an equitable business environment for companies and safeguarding the order of market competition,” he added. The country will continue to adopt the same standards for domestic and foreign companies and welcome multinationals to cooperate with Chinese firms in diversified ways. Meanwhile, foreign investors and the companies they invest in must strictly comply with Chinese laws and regulations and fulfill their social obligations, the spokesman said.
CASE

Microsoft's Browsers and Players are Involved in SAIC’s Anti-Monopoly Investigation

August 27, 2014

With regard to the progress of the anti-monopoly investigation on Microsoft, Mr. Zhang Mao, the Minister of the SAIC, revealed at a press conference held by the State Council Information Office that Microsoft is suspected of inadequate disclosure of information in relation to Windows and Office and suspected problems regarding the launch and sale of Players and Browsers. Currently, the investigation on Microsoft is progressing, and the SAIC will publicize the interim results at every stage in a timely manner. Compared to its previous statements, SAIC talked about Microsoft’s potential problems on the launch and sales of Players and Browsers for the first time.

It is said that in June, 2013, some entities complained to SAIC that Microsoft’s incomplete disclosure of information on its Windows and Office Suite has caused problems with compatibility, tying, and file validation, raising suspicions that the company violated the Chinese AML. SAIC therefore investigated Microsoft, accordingly. In June of this year, SAIC initiated the investigation against Microsoft and already publicized the progress of its investigation three times. Minister Zhang also mentioned that Microsoft’s senior management has expressed that they will respect Chinese law and cooperate with the Chinese anti-monopoly authority in the investigation.
The Petroleum Industry Reacts to the First Anti-Monopoly Law Suit of the Industry

August 21, 2014

As anti-monopoly investigations grow in intensity, anti-monopoly cases in each industry draw the public’s attention. Recently, the first anti-monopoly law suit in the petroleum industry emerged. A private company, Yunnan Yingding Bio-technology Co., Ltd. ("Yunnan Yingding") brought an anti-monopoly law suit against the Yunnan Branch of Sinopec Group.

As far as is known, Yunnan Yingding is a bio-energy company with a biodiesel production of 15,000 tons per year and also the only company which holds a scale production capability for biodiesel in Yunnan.

Since the Yunnan Branch of Sinopec Group occupies more than 80% of the sales terminal points, Yunnan Yingding hopes to cooperate with Sinopec to selling its biodiesel. However, the proposal was refused by Sinopec.

Based on the above, Yunnan Yingding filed a lawsuit against the Yunnan Branch of Sinopec, claiming that its biodiesel, which is consistent with the national standards, should be included in Sinopec’s sales system in accordance with the Renewable Energy Law. Besides this, Yunnan Yingding claims RMB 3 million in economic losses.

It is worthy of note that biodiesel producing companies have no qualification to sell, and must cooperate with companies that sell refined oil.

On July 30, the Intermediate People's Court of Kunming City, Yunnan Province held the case public trial. This is the first anti-monopoly law suit in the Chinese petroleum industry.

During the trial, Yunnan Yingding claimed that as a company that sells refined oil, the
Yunnan Brand of Sinopec Group occupied an absolute dominant position and the rejection of biodiesel provided by Yunnan Yingding without justification made it impossible for its biodiesel to enter the market and caused a huge economic loss for the company. Meanwhile, the rejection blocked the development of the renewable energy industry.

On the other hand, the counsel for Sinopec claimed that Yunnan Yingding had never proposed completed transaction conditions and requests to the defendant. Besides this, Yunnan Yingding could not submit effective evidence to prove the biodiesel was consistent with the national standards.

The two parties did not reach a consensus regarding the matter, which means the case will go through the decision making procedure. Mr. Chen Weibiao expressed that the judgment could be expected soon.

T&D Successfully Helps Two Japanese Companies Receive The Lowest Fines

August 20, 2014

On August 20, 2014, the National Development and Reform Commission ("NDRC") in China announced that it had imposed fines totaling 1.235 billion RMB (approx. 201 million USD) on twelve Japanese auto parts and bearing manufacturers for price fixing.

According to NDRC’s announcement, eight auto parts manufacturers which were involved in the auto parts investigation had been fined up to 831.96 million RMB (approx. 135 million USD), and four bearing manufactures involved in the bearing investigation had been fined totaling 403.44 million RMB (approx. 66 million USD). Both of the two investigations were initiated by NDRC after receiving certain
Japanese companies’ application for leniency rather than on NDRC’s own initiative.

T&D has respectively represented one company in each of the above-mentioned two investigations before NDRC. In the auto parts investigation, T&D represented Aisan while in the bearing investigation, T&D represented JTEKT.

It is noteworthy that with the assistance of T&D, both Aisan and JTEKT successfully received the lowest fines among all the companies concerned in each investigation, since T&D effectively communicated and cooperated with the clients and provided well-designed strategies and goal-oriented approaches for the two companies to appear before NDRC. Based on its abundant experience, T&D has minimized the loss of the clients and succeeded in protecting the clients’ legal interests.

**Four BMW 4S Shops that Jointly Charge a Pre-Delivery Inspection Fee for New Motors were Fined Around 1.63 Million Yuan For Price Monopoly Violations**

August 14, 2014

On August 13, the Price Bureau of Hubei Province held a warning conference for regulating the pricing practices involved in motors sales, and announced that the coordinated fee for Pre-Delivery Inspection (“PDI”) for new motors charged by four BMW 4S Shops in Wuhan city constituted a price monopoly agreement. The Price Bureau delivered a penalty of 1.6267 million Yuan. This is the first punishment of a motor distribution company since the antitrust investigation into the motor industry began.

The four BMW 4S Shops mentioned above are Wuhan Ebao, Whsummit, Handebao and Baoze. The reason for the punishment is that as a pre-sale inspection, PDI should be the duty and responsibility of the motors manufacturers and distributors. However, the above four 4S Shops jointly negotiated to charge this PDI fee, which constitutes a
price monopoly, and they were respectively punished with fines of 937,900 Yuan, 341,600 Yuan, 197,200 Yuan, and 150,000 Yuan.

The Price Bureau showed that the PDI fee, miscellaneous service charges, extended price posting on prominent positions are also in violation of the Price Law and Provisions on the Prohibition of Price Fraud.

Since new motors are transported thousands of miles from the manufacturers and distributors, in order to ensure the safety and original performance, the PDI should be a provided inspection which deliveries of these motors must include.

**Three warnings were given by the Price Bureau of Hubei Province**

(1) Prohibition against charging a PDI fee in the name of “after-sales services”, since PDI inspections are a before-sale and not after-sale service.

(2) Self-correction and self-reporting of collaborations among operators who have charged the PDI fee.

Several operators implemented an agreement to manipulate market price through directly or indirectly unifying the PDI fee standards. This conduct violates the AML and Provisions against Price Fixing and should be stopped and corrected immediately. The relevant operators should proactively report to the anti-price monopoly enforcement authorities. Those who refuse to proactively report will be punished once the conduct is verified through the investigation.

(3) Conduct business in accordance with laws and regulations

Companies should conduct business honestly and refuse price cheating; Companies should compete fairly while not conducting price monopolies; equally and voluntarily, companies should not take advantage of the industry by forcing fees on them openly or covertly.
Mercedes And Other Car Manufacturers Have Been Targeted In Antitrust Investigation

August 6, 2014

According to media reports, Mercedes-Benz’s Shanghai office was paid a surprise visit by 9 antitrust investigators from the NDRC on August 4, 2014, questioned employees and checked computers.

Beijing Mercedes-Benz Sales Service Co confirmed that it is involved in an antitrust investigation launched by the NDRC. Mercedes-Benz said that the company is actively assisting the investigation.

It is said the Mercedes investigation may target the company's controls on regulating the lowest price for both completed models and parts to dealers. If a company manipulates prices by controlling production, distribution and sales of a product, it violates the AML.

Mercedes-Benz is the first company in the automotive industry confirmed to be under a government antitrust investigation.

In addition, German manufacturer Audi is being investigated by the Hubei Price Bureau and US maker Chrysler by the Shanghai Development and Reform Commission. The report said investigations had found that the two companies took over the pricing rights for parts and maintenance services from dealerships and they will face punishment.

SAIC Warns Microsoft not to Interfere with Probe

August 4, 2014
On August 4, 2014, the SAIC warned Microsoft not to interfere with an ongoing anti-monopoly probe as they began inquiries into the company's corporate Vice President Mary Snapp.

Investigators from the SAIC warned that the company must firmly abide by Chinese law, and shall not interfere with the investigation “in any way”.

SAIC confirmed that it launched a probe into Microsoft China Co., Ltd, and three of its branches in Shanghai, Guangzhou and Chengdu as Microsoft is suspected of monopoly practices.

SAIC also said Microsoft had not been fully transparent with its sales data on the software it distributes in China, including information on sales of its media player and web browser software.

SAIC said they had made copies of the firm’s financial statements and contracts and seized documents, e-mails and other data from computers and servers, but they had not been able to complete the investigation because key personnel of Microsoft were not in China or could not be reached. Microsoft Corporation’s China unit responded saying it has always abided by laws and regulations in China and will “actively answer” questions raised in an anti-monopoly case and expressed willingness to cooperate with ongoing investigations.

**SAIC Investigating Accenture in Microsoft Probe**

August 6, 2014

According to the report, SAIC’s probe into Microsoft expanded to Accenture on August 6 as Microsoft is under investigation.

The SAIC said in a statement that it is investigating Accenture's office in Dalian City, Liaoning Province, for being the financial service outsourcer of Microsoft China Co.,
which is suspected of monopoly practices. The SAIC did not reveal results of the investigation and the probe is still underway.
FOCUS

Chongqing Releases Anti-Monopoly Measures to Break Regional Blockades and Trade Monopolies

August 31, 2014

On August 31, 2014, the General Office of the Chongqing Municipal Government released the Notice on Further Removal of Regional Blockades and Trade Monopolies to Promote Market Unification and Fair Competition ("Notice") to forbid any districts and counties from conducting regional blockades and trade monopolies in any form, and to avoid committing 16 kinds of monopoly behaviors.

The Notice requires each district and county to entirely remove all the rules and regulations which include content on regional blockades and also requires public service enterprises (e.g. water supply, electricity supply, postal service, telecommunication, transportation, radio and television, finance, insurance funeral and interment) with legal monopoly power and all the industry associations to correct their monopoly behaviors and regulations. Those enterprises and industry associations are required to report the results of their removals and rectifications to the Chongqing Bureau of Industry and Commerce before September 25, 2014.

The Chongqing Bureau of Industry and Commerce will cooperate and coordinate with other departments in the Government like the Legal Affairs Office and the Chongqing Business Committee to wrap up and draw a conclusion on the aforementioned removal and rectification work, and will publicize the final results by November 15, 2014, subject to the Municipal Government’s approval.
Some Real Estate Agents in Tianjin Jointly Raise Prices, Prompting Anti-Monopoly Investigation

August 10, 2014

Recently, some real estate agents in Tianjin jointly raise their service charge for second-hand housing transactions from 2% of the total transaction amount to 3%, an increase of 50%, which drew the attention of the public. Pursuant to relevant laws and regulations, the government department in charge of pricing in Tianjin officially initiated an anti-monopoly investigation.

The Development and Reform Commission of Tianjin showed that the government in department charge of pricing in Tianjin received complaints from citizens in relation to the price increase conducted by real estate agents, and then the department initiated the anti-monopoly investigation procedure. Currently, the department is investigating relevant companies which are accused of conducting price monopolies. Next, the government department in charge of pricing in Tianjin will enhance daily supervision of market conducts in the real estate agent market, and protect the normal market price order.