China

Monthly Anti-Trust Report

January 2015

Due to the general nature of its contents,
This newsletter is not and should not be regarded as legal advice.
For any questions please contact T&D Associates at:
21st Floor, Times Fortune
Shuguang Xili Jia 6, Chaoyang District,
Beijing 100028, People's Republic of China
Telephone: (8610) 58678228 Facsimile: (8610) 58678227
# TABLE OF CONTENTS

**AUTHORITY** ...................................................................................................................................3
  Director of the Bureau of Price Supervision and Anti-Monopoly of NDRC Met with President of Shanghai University and Signed Framework Agreement ........................................ 3
  MOFCOM Public Notice No. 2 [2015] -- Relieving Google of Certain Obligations in the Case of Acquisition of Motorola.................................................................4

**ACADEMIA** .....................................................................................................................................7
  Deepening the Reform of State-Owned Enterprises and Antitrust Seminar Held in Beijing....7
  Theory and Practice of Competition Law Seminar Held in Wuhan...........................................8

**CASES** ............................................................................................................................................10
  Nanjing Opens a Court Session to Hearing the Case of CUMT Student VS. China Telecom10
  Over 200 Public Bath Houses in Qiqihaer Suspected of Price Monopoly Using Collective Price Increase, Heilongjiang Price Bureau Started Investigation........................................12

**FOCUS** ...........................................................................................................................................14
  The Bottleneck in Anti-Trust Litigation Still Needs to Be Broken, Identifying Standard is Fuzzy.................................................................................................................................14
  Experts Predict Anti-Monopoly Law Enforcement will Normalize and Regulate this Year .. 18
AUTHORITY

Director of the Bureau of Price Supervision and Anti-Monopoly of NDRC Met with President of Shanghai University and Signed Framework Agreement

January 16, 2015

On the afternoon of January 14, Director Xu Kunlin of the Bureau of Price Supervision and Anti-Monopoly of the National Development and Reform Commission (“NDRC”) met with a group of people led by the Secretary of the Party Committee and President of Shanghai University, Luo Hongjie. Director Xu first introduced the anti-monopoly work that had been conducted by the Bureau, and said that with the economic system reform getting more and more profound, competition policies and anti-monopoly laws would be more and more important as a part of economic reforms. Reinforcing the implementation of competition polices and anti-monopoly laws is significant to promoting unification and openness, constructing an orderly competitive market system, making sure that the market has a decisive effect in the distribution of resources, and that the government could play better role. Director Xu hoped that Shanghai University could make the best of its disciplinary and regional strengths, integrate relevant sources, and form the center of competition law research in Shanghai so as to play an active role in promoting the implementation of competition policies and anti-monopoly laws.

President Luo recognized the import role of competition policies and anti-monopoly laws. He said that in recently years the NDRC had achieved positive results in its anti-monopoly enforcement work and had greatly raised the general public’s awareness of anti-monopoly laws. Competition policies and anti-monopoly laws involve various aspects of society and are of vital interest to the masses. He indicated that Shanghai University would be willing to exercise its own strengths to conduct
relevant research work in order to make positive contributions to promote the implementation of competition policies and anti-monopoly laws.

After the meeting, the Bureau and Shanghai University concluded a Framework Cooperation Agreement. The agreement stipulates that the two parties will cooperate in the area of anti-monopoly laws. The Bureau of Price Supervision and Anti-Monopoly will propose requests to Shanghai University for study subjects based on the needs of their practical work, and will entrust Shanghai University with organizing relevant professional training sessions. Shanghai University, on the other hand, will establish a Shanghai Competition Landscape Research Center and recommend experts and scholars to give feedback to the Bureau when advice is sought. It was further agreed that Shanghai University could select young teachers to participate in the real world price supervision and anti-monopoly work in a proper way. The University could also invite leaders of the Bureau and relevant experts to offer courses and introduce issues in anti-monopoly practice. The Bureau would also provide opportunities for the students of related specialties at Shanghai University to provide opportunities and facilitate conditions. The two parties will also cooperate to promote the development of the China Price Supervision and Anti-Monopoly magazine.

Vice Director Li Qing of the Bureau and the Competition Policies and International Cooperation Department also attended the meeting.

**MOFCOM Public Notice No. 2 [2015] -- Relieving Google of Certain Obligations in the Case of Acquisition of Motorola**

January 9, 2015

On December 1, 2014, the Ministry of Commerce of the People's Republic of China
(“MOFCOM”) received the application from Google Incorporated (hereinafter referred to as Google) for relieving the obligations set out in Article II of MOFCOM’s Announcement No. 25 [2012]. After review, it was decided by MOFCOM that Google's application is approved.

I. Background Information

On May 19, 2012, the MOFCOM issued Announcement No. 25 [2012] in which MOFCOM granted conditional approval of the concentration of undertakings in the acquisition of Motorola Mobility LLC (hereinafter referred to as Motorola Mobility) by Google and required Google to undertake the following responsibilities:

1) Google will license Android free of charge and in open source, consistent with its current commercial practices.

2) Google will treat all original equipment manufacturers (i.e., mobile terminal manufacturers) in a non-discriminatory manner with respect to the provision of Android.

3) Google will continue to comply with the obligations Motorola currently undertakes with respect to its (presumably only essential) patents to license on fair, reasonable and non-discriminatory (FRAND) terms.

4) Google will appoint an independent supervising trustee to supervise its performance of these conditions.

Pursuant to the Announcement, the first two obligations are imposed for a period of 5 years, although Google may request MOFCOM change or terminate these conditions before the expiry of that period. If Google no longer controls Motorola Mobility, the first two obligations shall no longer be in force.

II. Application by the Party
During the review process of the proposed acquisition of Motorola Mobility by Lenovo Group Co., Ltd. (hereinafter referred to as Lenovo), Google undertook to continue to comply with the first obligation and applied to relieve the second obligation. On December 1, 2014, Google submitted a proposal to MOFCOM that after the competition of the acquisition of Motorola Mobility by Lenovo on October 30, 2014, Google no longer controlled Motorola, and further applied, pursuant to Announcement No. 25 [2012], for a decision on relieving the second obligation required in Announcement No. 25 [2012].

III. Review Decision

It was seen that on January 29, 2014, Lenovo and Google concluded an Acquisition Agreement according to which Lenovo acquired 100% shares in Motorola Mobility from Google. On March 26, MOFCOM received a notification of concentration of undertakings from Lenovo for the proposed acquisition of Motorola Mobility by Lenovo. After Google sold 100% shares in Motorola Mobility, it no longer produced smart mobile devices though it still retained the communication technology patents of Motorola Mobility. On October 16, MOFCOM issued its decision to grant clearance for the 100% shares purchase of Motorola Mobility by Lenovo. On October 30, Lenovo issued a public notice that it had completed the acquisition of Motorola Mobility. Based on the above facts, according to the MOFCOM Announcement No. 25 [2012], MOFCOM decided to approve Google’s application, and confirm that the second obligation in MOFCOM’s Announcement No. 25 [2012] has been relieved while the rest continue to remain in full force.
ACADEMIA

Deepening the Reform of State-Owned Enterprises and Antitrust Seminar Held in Beijing

January 18, 2015

The deepening of reform of state-owned enterprises and Antitrust seminar sponsored by CCIE of the Capital University of Economics and Business, the Antitrust and regulation research base of Shandong University, the Industry organization and enterprise organization research center of Dongbei University of Finance and Economics was held in Beijing. More than 70 experts and scholars from institutions of higher learning and scientific research institutes attended the meeting. The experts gave their opinions about issues such as the main problems for state-owned enterprises at this stage, the direction and path of deepening reform of state-owned enterprises, and the specific pattern of reforming monopoly industries, etc. Experts consistently agreed that under the new norm, deepening the reform of state-owned enterprises is actively contributing to a mixed-ownership economy, taking incoming non-state capital as strategic investment, establishing standard corporate governance mechanisms, and implementing reform according to the law.

The experts pointed out that at present in China the difference in factor productivity between various departments is large, indicating the presence of flow barriers, with the problem rooted in monopoly. Therefore, under the new norm, the key to reforming is to increase productivity, and improving productivity requires antitrust work. Reform of State-owned enterprises and antitrust are inseparable, to deepen the reform of state-owned enterprises, there must be antitrust, especially to get rid of administrative monopolies and maintain fair market competition.
Some scholars believe that the 35 years of state-owned enterprise reform that followed the ideas of decentralization of power and profits transfer, institutional innovation, and strategic restructuring, has helped China’s market economy continue to develop in depth. This remarkable achievement in reforming the system is closely linked with the Chinese road and the Chinese model. Gradual reform made achievements in all aspects, although it also accumulated a series of contradictions, such as strong government pattern, the strong state pattern, strong fiscal pattern, strong monopoly pattern, etc. These will definitely lead to a "squeeze" phenomenon, like the government's squeeze on the market, the state-owned enterprises’ squeeze on private enterprises, and monopolies’ squeeze on competition. While reform develops in depth, the different positioning of state-owned enterprises will determine a completely different direction of reform. Some scholars further note that the state-owned enterprises reform should implement classification reform based on de-administration, set the different goal of state-owned enterprises reform, classify regulation measures, and carry through the collaboration of national high level design and local support.

**Theory and Practice of Competition Law Seminar Held in Wuhan**

December 31, 2014

Recently, the theory and practice of competition law seminar was held in Wuhan. The seminar was sponsored by Wuhan University College of Law, and presented by the IP law Institute of Wuhan University, the Bureau of Fair Trade of the Administration for Industry and Commerce of Hubei province, and the Secretariat of the Institute of Industry and Commerce of Hubei Province. Participants mainly discussed focusing on the issues in the application and enforcement of law like unfair competition, antitrust and IP protection.
The seminar divided into many units, which were revising the “Anti-Unfair Competition Law”, the Unfair Competition Law, the enforcement of antitrust law, and the IP and antitrust unit. There were more than 30 business personnel from the Administration for Industry and Commerce of Hubei province that attended the meeting.

Yaping Zhu, the branch director of the Fair Trade Bureau of the Provincial Ministry of Industry and Commerce, and Zhuyue Liu, the branch director of the Fair Trade Bureau of the Ministry of Industry and Commerce of Enshi Tujia and Miao Autonomous Prefecture, and En Huang, the branch director of Fair Trade Bureau of the Ministry of Industry and Commerce of Yichang, and Yumei Wen from the Shashi branch of the Ministry of Industry and Commerce of Jingzhou all separately made a presentation at the seminar. Famous experts and scholars from Peking University, Wuhan University, East China University of Political Science and Law, Shanghai Jiao Tong University, Huazhong University of Science and Technology, Huazhong Agricultural University, Zhejiang Science and Technology University, and Zhengzhou University attended the seminar and participated in academic exchanges.

Wei Feng, The vice director of the Industrial and Commerce Bureau of Hubei province said that in order to achieve strong legal and professional competition enforcement, and the quality of the enforcement team’s ability would directly affect the enforcement authority and image of the enforcement department, so they must train experts and inter-disciplinary talents who can adapt the new situation. The business sector has accumulated a wealth of practical experience of enforcement law in the fulfillment of its market regulatory function. The new issue in improving the Regulatory effectiveness of provincial Bureaus of Industry and Commerce is how to make business personnel in enforcement of competition law more effective at enhancing the level of law enforcement, using new theoretical achievements to guide working practices, and strengthen regulations during and after the matter. This seminar was a hearty attempt to discuss the improvement of regulatory efficiency.
CASES

Nanjing Opens a Court Session to Hearing the Case of CUMT Student VS. China Telecom

January 23, 2015

Wang Xinyu, a student of the China University of Mining and Technology (“CUMT”) sued China Telecom Xuzhou Branch for its monopoly, and in the morning of January 20, the Nanjing Intermediate People’s Court opened a public court session. It is the first case in China where a student filled anti-monopoly public interest litigation.

In March 2013, Wang Xinyu the plaintiff, purchased a preferential activity package from Tianyi Mobile Phone’s “top up + sign a contract” promotion, which cuts down or exempts your Smartphone’s price at the CUMT Nanhu Business Lobby of China Telecom Xuzhou Branch, the defendant. In September 2014, Wang Xinyu paid RMB 400 to upgrade the package to a new package which can enjoy better service when he was told he would have to pay RMB 400 for the upgrade. But in the middle of October 2014, Wang Xuyu learned that either the original package he purchased was already paid or that there should be no fee to upgrade when he consulted information at the Telecom Business Lobby. In this regard, Wang Xuyu considered CUMT Nanhu Telecom Business Lobby infringed upon his right to significantly change the activity privilege and he found help from a Student Legal Aid Center at CUMT, immediately.

After knowing the causes and effects of the event, the center thought that pursuant to Article 18 and Article 19 of the Chinese Anti-Monopoly Law, China Telecom Xuzhou Branch, the defendant, had a dominant position in the communication market which, however, the defendant abused, in violation of Subparagraph 6, Paragraph 1 of Article 17 of the Anti-Monopoly Law and infringed upon the plaintiff’s legal interests. Moreover, pursuant to Article 50 of the Anti-Monopoly Law, the defendant shall take
the civil responsibility of compensating the plaintiff for the loss. In order to save Wang Xinyu’s loss and protect other CUMT students’ legal interests, the center as the agent of Wang Xinyu sued CUMT Nanhu Telecom Business Lobby through the court to thoroughly eliminate the legal violations and infringements made by the Telecom Business Lobby. The case was initiated by the Nanjing Intermediate People’s Court and was heard officially on January 20, 2014.

The plaintiff and defendant argued fiercely in the court about whether the defendant engaged in monopoly conduct or held a monopoly position. The defendant states that price cutting-down of the package was the result of market competition, but not monopoly, and they did not occupy the dominant position in the relevant market or conduct monopoly behavior. Then, the parties made fierce arguments similarly in terms of whether the defendant has abused the dominant position and was treated differently than other persons. The court hearing lasted for approximately 4 hours. The chief judge announced the end of the hearing and the judgment will be pronounced a different day as the plaintiff would not like to accept the conciliation.

As the high development of economy and the high expansion of the Group Company, the monopoly disputes in various fields and industries have emerged endlessly.

The weak position of the individual when facing an enterprise cannot be reversed in a short period of time. This case has reflected that the anti-monopoly consciousness of the public is improving step by step, and China increasingly pays more attention to the fair and rationalization of market competition. In order to protect fair market competition, enhance economic efficiency, safeguard the interests of consumers and the interests of the society as a whole, and promote the healthy development of the socialist market economy, China implemented the Anti-Monopoly Law as of August 1, 2008 and has improved efficiency despite the short time period. Compared to protecting the system, what is more important is the awakening of the public’s awareness of monopolies. Only if everyone can conscientiously maintain market order, will the economy be better enhanced.
Over 200 Public Bath Houses in Qiqihaer Suspected of Price Monopoly Using Collective Price Increase, Heilongjiang Price Bureau Started Investigation

January 16, 2015

On the 15th of this month, Heilongjiang Price Bureau announced that over 200 public bath houses in Qiqihaer collectively increased prices during the New Year’s holiday, and the behavior is suspected of constituting a Price Monopoly in the industry pursuant to related laws and regulations. The Price Bureau has started to investigate, accordingly.

Recently the media exposed information that public bath houses in Qiqihaer increased prices collectively during the New Year’s holiday. Later the Heilongjiang Price Bureau investigated to know that Qiqihaer Bath Association discussed the prices of bathing tickets at the Founding Conference and confirmed that bathing tickets of small bath enterprises should increase to 10 Yuan/person from 8 Yuan/person but not more than 10 Yuan/person; the bathing tickets of large or intermediate bath enterprises increased to 15 Yuan/person from 10 Yuan/person but not more than 15 Yuan/person. The representatives coming from over 200 bath enterprises raised hands to pass the decision without written materials and these bath enterprises increased the prices collectively as of January 1, 2015. Compared to the former price, ticket prices of small enterprises increased 20% and large or intermediate enterprises increased 50%.

Relevant members of the Heilongjiang Price Bureau introduced that the bathing industry is the price liberalization industry, and the undertakings can decide prices by themselves whilst their prices under the supervision of Price Departments and must be subject to relevant laws and regulations. Pursuant to the related terms in the Anti-Monopoly Law and the Anti-Price-Monopoly Provisions, it is prohibited that
industry associates organize undertakings to engage in Price Monopoly behavior, and the undertakings with competing relationships fix or change prices and price variation margins. Qiqihaer Bath Association’s behavior of fixing or changing prices of products (services) has been suspected of violating such laws.

The Heilongjiang Price Bureau has currently urged Qiqihaer Bath Association and undertakings to cooperate positively with the price investigations, correcting the price violation behaviors. The case is still being investigated.
FOCUS

The Bottleneck in Anti-Trust Litigation Still Needs to Be Broken, Identifying Standard is Fuzzy

January 5, 2015

In 2014, anti-trust law enforcement took cities and seized territory. In anti-trust litigation, the performance of the judicial authority is also remarkable.

Icebreaking of Anti-administrative Monopoly Litigation

On April 22, 2014, the Shenzhen Tsinghua Sware Software Hi-Tech Co., Ltd. (THSWARE) sued the Guangdong Provincial Department of Education for abuse of administrative powers, which specified the use of another company’s software program in a national selection event. This behavior was suspected of violating the relevant provisions of the Anti-Monopoly Law. On June 26th, the case of the first instance was heard in Guangzhou Intermediate People's court. This is the first administrative monopoly law litigation since the Anti-Monopoly Law was promulgated six years ago which was formally accepted by the court and has entered a substantive stage of trial.

In addition to administrative monopoly litigation, anti-trust litigation in civil fields also has groundbreaking actions.

Yunnan Yingding Biological Science and Technology Co., Ltd. sued Sinopec and Sinopec Sales Co., Ltd. Yunnan Branch for refusing to deal with them. This case was the first anti-trust case in Yunnan, and it was also the first anti-trust case in the aspect of the national petroleum system. On December 18th, Kunming Intermediate People’s Court made the first instance judgment, which determined that Sinopec Yunnan
Branch violated the renewable energy law and anti-monopoly law, and ordered that Sinopec Yunnan Branch should put Yingding Company’s biodiesel into its sales system within 30 days after the judgment went into effect. Recently, as of the first-instance verdict, Sinopec Yunnan Branch has decided to appeal.

On the morning of October 16, 2014, the Supreme People's Court made a historical decision about "the first case of unfair competition on the Internet": it determined that Tencent’s QQ does not have a dominant market position, rejected Qihoo 360’s appeal, and maintained the first instance judgment. The judgment set up judicial benchmarking for the field of Internet monopoly cases. This was by far the largest Internet industry litigation of unfair competition cases in terms of target amount, which had a significant impact in the country. Since the anti-unfair competition law came out many years ago, this case was also the first anti-unfair competition case that the Supreme People’s Court heard. The case itself has raised industry, users, and the legal profession’s concern.

Civil Litigation Still Comes to a Standstill

Although China has had some performance as listed above in the aspect of anti-trust litigation in 2014, it has made little progress in the field of anti-monopoly civil litigation, and moreover there has never been a case in the field of administrative monopolies. According to data published by the Supreme People's Court, by the end of 2011, the number of the court’s first instance civil monopoly cases was only 61, and no case was in favor of the plaintiff. After 2011, Beijing Rui Bang Company sued Johnson for allegedly signing a vertical monopoly agreement, and only in this case did the plaintiff win. In October, 2013, the Shanghai High Court made a second instance finding that Johnson Company’s limited minimum resale price maintenance agreement produced the effect of eliminating and restricting competition in the relevant market, and that it formed a monopoly agreement. Johnson Company shall compensate Rui Bang Company 530,000 Yuan for its loss.
Why is the win rate of anti-monopoly civil litigation so low? Beijing Dacheng Law firm lawyer, Wei Shilin, analyzes that civil monopoly cases require strong professionality and the general public cannot get evidence with objective data to prove that a company has a dominant market position. According to the anti-trust law, the premise of ensuring that a corporation truly engages in monopoly behavior is that the corporation involved in the alleged monopolistic conduct has a dominant position in the market. But the anti-monopoly law does not have a clear standard for allocation of evidential burden. In judicial practice, it is often difficult for the plaintiff to provide evidence to prove that the defendants have a dominant market position or the defendant’s abuse of a dominant market position.

**Identifying Standards and Rules are Vague**

Besides difficulties in proof, the standards and principles are vague with regard to identifying the restrictions and elimination of competition, which is a significant reason behind the rarity of anti-monopoly litigation.

As explained by Jin Shanming - an associate researcher at the Institute of Law at the Chinese Academy of Social Sciences, there are only 57 articles in the existing Anti-monopoly Law which prescribe three kinds of monopoly actions, namely Reaching a Monopoly Agreement, Abuse of a Dominant Market Position, and the Concentration of Undertakings that has, or probably has, the effect of eliminating or restricting competition. Nevertheless, these are doctrines rather than practical rules. In that regard, SAIC, NDRC and MOFCOM have issued interpretations of relevant regulations respectively in accordance with their own needs in law enforcement within the jurisdiction of three categories of actions, namely non-price monopoly, price monopoly, and concentrations of undertakings. And yet, there are still gray areas.

For instance, the Anti-price Monopoly Regulation is a substantive interpretation issued by NDRC on the regulations of anti-monopoly law in terms of price monopoly.
There are 29 articles in total, 20 of which are made in the form of direct citation or replacement of words, and the other 9 articles, except the power of interpretation and annulment terms, are abstract descriptions of concepts such as “cooperative actions” and “good cause”, while the operability still relies on the discretion of enforcement agencies of anti-monopoly law. Therefore, with regard to the texts, administrative interpretations basically repeat or reword the provisions in anti-monopoly law, not involving substantive issues, and the actual effect in law enforcement still needs examination.

Due to the lack of law enforcement practice, the knowledge of anti-monopoly law is usually “a priori” or referential, and all the more so when it comes to administrative interpretations. Jin Shanming stated that anti-monopoly law prescribes “no good cause” as a limit in defining the abuse of dominant market position; however, “good cause” as a key term in determining whether there is abuse of dominant market position is only mentioned in Article 17 of the Anti-monopoly Law. In that regard, Anti-price Monopoly Regulation and Regulations of Administrations of Industry and Commerce on Prohibiting the Abuse of Dominant Market Position have made interpretations, which also lack operability due to the abstract wording and rhetoric. For example, as for determining whether there are “good causes”, Article 8 of the latter Regulation points out that the following factors shall be taken into consideration: whether the action is taken in favor of ordinary business activities and interests, and what influences it has on the efficiency of economic operations, public interest, and economic development. The question is: to what extent is such an interpretation more definite than the law in its nature? It is thus clear that law enforcement will probably not achieve the desired results, though the enforcement agencies have published relevant interpretations in succession.
Experts Predict Anti-Monopoly Law Enforcement will Normalize and Regulate this Year

January 5, 2015

Anti-monopoly law enforcement advanced triumphantly in 2014.

This year, many well-known foreign companies such as Qualcomm, Tetra Pak, Microsoft, Mercedes, etc. have faced investigation by China's anti-monopoly law enforcement; Japanese auto parts enterprises received the biggest fines since the birth of the anti-monopoly law; rare anti-administrative monopoly investigation cases have also arisen on suspicions of discriminatorily charging road tolls, and the National Development and Reform Commission (NDRC) launched an anti-monopoly investigation on an administrative organ at the provincial level for the first time.

There are so many bright spots of "first times", "largest," and so on in 2014, leaving this year with a groundbreaking mark in the course of China's anti-monopoly law enforcement.

This kind of strength has been accused of "selective law enforcement", "lacking law enforcement transparency", “lacking professionalism” and so on. As for the trend of the anti-monopoly law enforcement from now on, a majority of experts give prudent predictions. They think, in view of law enforcement difficulties, the strengthening of supervision by public opinion as well as the improvement on the Government Information Publicity System, anti-monopoly law enforcement in 2015 will become more prudent and precise, and strong law enforcement is likely to slow down.

Full bloom of anti-monopoly law enforcement

2014 is the year in which anti-monopoly law enforcement blossomed everywhere. Both for domestic enterprises and foreign enterprises, also both for natural
monopolies and administrative monopolies, law enforcement and judicial organs all increased their engagement.

The anti-monopoly investigation on many multinational companies and foreign companies is a big characteristic of anti-monopoly in 2014. At the beginning of the New Year, the information of anti-monopoly law enforcement drew people's attention. Qualcomm was under anti-monopoly investigation by the National Development and Reform Commission, and Tetra Pak and Microsoft were under an anti-monopoly investigation by China’s State Administration for Industry and Commerce.

On May 29, the National Development and Reform Commission issued the first anti-monopoly fine for 2014. Because price monopolistic behavior violated the anti-monopoly law, five eyeglass production enterprises including Essilor, Bausch & Lomb, etc., were fined more than 19 million Yuan.

Into the summer, the National Development and Reform Commission targeted the import auto industry as a goal for a new round of anti-monopoly enforcement. On August 4, the anti-monopoly investigation team of the National Development and Reform Commission abruptly investigated Mercedes’ Shanghai office. A number of Mercedes executives were summoned for questioning, and many office computers were inspected. After then, luxury cars such as Chrysler and Audi reduced their prices one after the other in response to China's anti-monopoly investigations.

At the same time, domestic enterprises are also undergoing anti-monopoly investigations and anti-monopoly penalties. So far, it is clear to see through the "Anti-monopoly Cases Release Platform" that all 16 anti-monopoly cases punished by the anti-monopoly enforcement authority in the industry and commerce system target domestic enterprises.

The "restricting administrative monopoly" provision in the Anti-Monopoly law has been plagued by the "decoration" question. On September 13, the NDRC
anti-monopoly bureau director Kun Lin, Xu announced at a news conference in the State Council Information Office (SCIO) that the stipulation by Hebei province, that the bus in its province will be charged half price of toll fees but out-of-province buses will be charged full price, is suspected of violating the anti-monopoly law, and it is under the National Development and Reform Commission's investigation. Relevant government departments in Hebei province soon put forward an improvement scheme, restoring prices to the same price charged for local vehicles and vehicle from other places.

Repeatedly refreshed anti-monopoly fines

In 2014, the anti-monopoly enforcement authority continued the intensity of punishment in 2013; anti-monopoly fines reached new highs repeatedly.

In sweltering mid-August, the National Development and Reform Commission offered a 1.235 billion Yuan penalty to 12 Japanese auto parts companies, and so far this is the biggest anti-monopoly fine in China. It is understood that since 2013 the National Development and Reform Commission has issued 7 anti-monopoly fines, each of which reached more than ten million Yuan.

On September 2, in view of the fact that the insurance industry association of Zhejiang province organized 23 provincial property insurance companies to hold a meeting about car insurance premiums and they violated the anti-monopoly law regulation, the National Development and Reform Commission decided to fine the insurance industry association of Zhejiang province 500,000 Yuan, and 110 million Yuan on the 23 property insurance companies involved. This is by far the biggest anti-monopoly fine in the insurance industry.

The media exclaims that anti-monopoly fines are higher and higher. Industry experts remind the public that the focus for anti-monopoly enforcement should not just be placed on the amount of the fine. Professor Jian Zhong Shi, a modification and review
panel expert for the Anti-Monopoly Law of the State Council Legislative Affairs Office and a director in the competition law research center of China University of Political Science and Law thinks that even if a fine is a "sky-high price", the purpose of law enforcement is not for huge fines, but for restoring the normal order of market competition.

Super-national treatment is closed

The intensive law enforcement on foreign-funded enterprises soon triggered suspicion. The European Union Chamber of Commerce in China raised objection to the anti-monopoly investigations in China, considering that they have been treated unfairly. Others argue that there is a double standard in China’s anti-monopoly law enforcement. While there is strict law enforcement on private enterprise and multinational companies, the law enforcement on state-owned enterprise is passive.

As for this point of view, Mengyan, an associate professor in the law school of Renmin University of China, thinks that the business activities of multinational companies and foreign-funded enterprises in China enjoy “Super-national Treatment” in the initial stages of reform and opening-up. When faced with anti-monopoly law enforcement practices in China, foreign-funded enterprises should consider more, keep a low-profile, and reflect on whether their own pricing behavior violates the anti-monopoly provision.

Since the initiation of China’s anti-monopoly law in August, 2008, the National Development and Reform Commission and the State Administration of Industry and Commerce did not “exert force” until the past two years. As for this point, Huangyong, deputy supervisor of the expert consultation group for the Anti-monopoly Commission of the State Council and professor in the law school of University of International Business and Economics, expresses that this phenomenon may be explained as that: For the new anti-monopoly law, law enforcement authorities are willing to set aside a period of time for market players to correct themselves before as
the authorities themselves also need some time to learn professional knowledge and accumulate law enforcement experience. However, after six years, law enforcement authorities today both have the intention and the capability to fully open anti-monopoly law enforcement. To some extent, law enforcement authorities are cleaning “historical debts”. Law enforcement work is becoming normality.

**Law enforcement transparency awaits improvement**

The transparency of law enforcement has become a focus point for the general question in the foreign press on China’s anti-monopoly law enforcement.

On September 2, 2014, the National Development and Reform Commission announced its 0.11 billion Yuan anti-monopoly “ticket” on the insurance industry in Zhejiang province and published its full written decision of administrative penalty at the same time. However, the scrupulous reader can find that this written decision of administrative penalty has been made by the National Development and Reform Commission as early as the end of 2013, so why is it not published until today? Should the written decision of administrative penalty for anti-monopoly law enforcement be published timely?

Meanwhile, the publishment of written decisions of administrative penalties for anti-monopoly law enforcement lacks unified legislation. This becomes another question raising suspicion of foreigners regarding anti-monopoly law enforcement transparency.

Insiders generally consider that anti-monopoly law enforcement will become normality from now on. However, considering law enforcement difficulties, the strengthening of the supervision of public opinions as well as the improvement on Government Information Publicity System, anti-monopoly law enforcement in 2015 will become more prudent and precise; the strong law enforcement is likely to slow down.
Professor Huangyong thinks that the focus for anti-monopoly law enforcement from now on should return to the legislative intention for the anti-monopoly law, that is to say, to safeguard a healthy market competition order. From now on, anti-monopoly cases will be more complex and involve more frontier domains. This puts forward a higher demand for the professionalism of anti-monopoly law enforcement. Thus, law enforcement authorities in our country should be well prepared and meet the challenge actively.