

天地和律師事務所 T&D Associates

China

Monthly Anti-Trust Report

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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

| | |
|---|----|
| LEGISLATION..... | 3 |
| NDRC: Guideline on Leniency Policies in Horizontal Monopoly Agreement Cases has Begun to Seek for Opinions | 3 |
| SAIC Held a Forum to Seek for Opinions and Comments on the Guideline on Prohibiting the Behavior of Abusing Intellectual Property Rights to Restrict or Eliminate Competition (the Sixth Draft) | 4 |
| AUTHORITY | 8 |
| MOFCOM Year-End Review: Positively Promoting Anti-monopoly Enforcement and Protecting Fair Competition of the Market | 8 |
| SAIC: Anti-monopoly Law Enforcement Treats All Market Players the Same | 10 |
| ACADEMIA | 11 |
| China Competition Policy and Law Annual Conference is Held, Revealing the Number of Anti-monopoly Cases in 2015..... | 11 |
| CASES | 13 |
| Shanxi Provincial Price Bureau: 32 Motor Vehicle Detecting Enterprises are Suspected of Horizontal Monopoly..... | 13 |
| The Monopoly Agreement Case of the 12 Insurance Companies, such as China Pacific Life Insurance Co, Hubei Branch | 15 |
| The Monopoly Agreement Case of the 7 Insurance Companies, such as Yangzhou Aodu Concrete Co Ltd..... | 17 |
| Eight Ro-ro Cargo International Shipping Enterprises was Imposed RMB 407 Million Yuan for Conducting Collusive Tendering..... | 18 |
| The SAIC Chongqing Branch Investigating the 1st Antitrust Case in Pharmaceutical Industry | 19 |
| FOCUS..... | 21 |
| Microsoft Suffered another Chinese Anti-Monopoly Investigation, Inquiry Analysts Said the Penalty May be a New Record High if Found Illegal | 21 |
| "Break Monopoly" Reform is Expected to Increase Efforts to Involve More Monopoly Industries in 2016..... | 23 |
| REN Yong (John), the Managing Partner of T&D Received the Interview of CCTV for the 1st Antitrust Case in Ro-Ro Cargo Shipping Area..... | 25 |

LEGISLATION

NDRC: Guideline on Leniency Policies in Horizontal Monopoly Agreement Cases has Begun to Seek for Opinions

January 13, 2016

Policy Research Office of the National Development and Reform Commission (NDRC) (Information Office) held a press conference in the big conference room on the third floor of NDRC's Zhongpei building at 9:30 am on January 12 (Tuesday), released macroeconomic operation data and responded to hot issues. Relevant persons in charge of NDRC attended the conference and replied to the questions from journalists. The secretary general of NDRC Li Pumin expressed that *Guideline on Leniency Policies in Horizontal Monopoly Agreement Cases* has been delivered to every member unit of the Anti-monopoly Commission of the State Council to seek for opinions. Besides making necessary elaboration on the terms in the anti-monopoly law, this Guideline supplements some more operable contents.

Specific contents are as follows:

A journalist from China National Radio:

We learned that the anti-monopoly guideline of intellectual property has officially sought for opinions recently and the first draft of the anti-monopoly guideline of automobile industry has already been finished, but there is still another guideline related to the leniency policies in anti-monopoly cases, what is the preparation situation of this guideline? In addition, what is the relationship between this guideline and the exemption clauses in other guidelines? Thanks.

Li Pumin:

According to the work plan of the Anti-monopoly Commission of the State Council of last year, NDRC initiated the drafting work of *Guideline on Leniency Policies in Horizontal Monopoly Agreement Cases* in last June and formed the exposure draft. After multiple modifications and perfections, the exposure draft has been delivered to every member unit of the Anti-monopoly Commission of the State Council to seek for opinions on December 24, 2015.

This Guideline puts forward the principle that the leniency amounts given to undertakings should match with the contribution degree made by the undertaking in assisting the law enforcement agencies in investigating and coping with

anti-monopoly agreement cases. Besides making necessary detailing and clarifications on the terms already covered in the anti-monopoly law, this Guideline also supplements some more operable contents according to the legislative spirit of the anti-monopoly law and the actual situations of law enforcement and by reference to relevant guideline documents of some foreign countries and regions.

I hereby give examples from four aspects: The first is that it clarifies the materials requirement for applying for leniency, refines the judgment standard of important evidences in leniency application; The second is that it introduces the mark system of leniency mechanism, allowing undertakings to submit the preliminary report on monopoly agreements in advance and supplement relevant materials later within the time limit specified by the law enforcement authorities. That is to say, the time when undertakings submit the preliminary report may be determined as the time and sequence for their leniency application; The third is that it stipulates the attached obligations for the leniency obtained by undertakings, meanwhile it differentiates the deduction degree of fines leniency according to different sequences of undertakings so as to improve the incentive efficiency of leniency mechanism; The fourth is that it provides the information disclosure and confidentiality obligation of law enforcement authorities, requiring law enforcement authorities to explain the result and the reason thereof to undertakings after making relevant decisions, and publish such decisions to the public within 20 working days. Meanwhile, law enforcement authorities should separately seal up the information materials submitted by undertakings for safekeeping and should not disclose to the outside without the approval of undertakings.

SAIC Held a Forum to Seek for Opinions and Comments on the Guideline on Prohibiting the Behavior of Abusing Intellectual Property Rights to Restrict or Eliminate Competition (the Sixth Draft)

January 11, 2016

On January 6, 2016, the Competition Law Enforcement Bureau of the State Administration for Industry and Commerce (SAIC) called together many foreign and domestic enterprises to seek for opinions on the *Guideline on Prohibiting the Behavior of Abusing Intellectual Property Rights to Restrict or Eliminate Competition (The Sixth Draft)* (hereinafter referred to as the *Guideline (The Sixth Draft)*). Representatives of ICT industry from enterprises such as Huawei, ZTE Corporation, China Mobile Communications Corporation, China Telecom, Samsung, Tencent,

Alibaba, etc. participated in the forum. Up until now, SAIC has sought for opinions in written form on the *Guideline (The Sixth Draft)* from 22 relevant departments such as National People's Congress, Supreme People's Court, Office of Legislative Affairs and the Ministry of Commerce (MOFCOM), etc. as well as provincial industrial and commercial bureaus throughout the country, and called together enterprises and chamber of commerce of EU and the US and law firms in seminars to seek for their opinions. Attendees expressed that the open legislation practice of SAIC clarifies the situations regarding the legislative and implementation idea of the anti-monopoly guideline related to intellectual property rights, etc., the *Guideline (The Sixth Draft)* drafted by SAIC has complete contents covering important issues and international frontier trends concerned by undertakings, and has a powerful guiding function for undertakings to strengthen their own system construction and compliance management related to intellectual property rights. In the next step, the Competition Law Enforcement Bureau will host the forum of specialists and scholars to seek for relevant opinions and suggestions.

The *Guideline on Prohibiting the Behavior of Abusing Intellectual Property Rights to Restrict or Eliminate Competition* (hereinafter referred to as the *Guideline*) is an important supporting legislation related to the *Anti-Monopoly Law* of the Anti-Monopoly Committee of the State Council, it is also an important work to carry out the *Several Opinions of the State Council on Accelerating the Construction of Great Power in Intellectual Property Rights Industry under the New Situation*, and to “regulate the abuse of intellectual property rights, improve the laws and systems regulating the abuse of intellectual property rights and formulate relevant anti-monopoly law-enforcement guidelines”. It is aimed at accomplishing the ultimate purpose of protecting competition, stimulating innovation and safeguard consumers' interests through regulating related behaviors of abusing intellectual property rights to restrict or eliminate competition.

According to relevant work arrangement of the Anti-Monopoly Committee of the State Council, the Guideline of the Committee will be separately drafted by four agencies including MOFCOM, SAIC, NDRC and State Intellectual Property Office, and the official version will be integrated and formed by the office of the Committee. In fact, SAIC has firstly initiated formulation work of the Guideline as early as 2009. After the work of systematic research, field research and interview, etc. for many years it systematically studied and mastered the overall situation as well as the pattern of manifestation of the behavior of abusing intellectual properties to eliminate or restrict competition currently in China. After several rounds of opinions seeking and modifications, it formulated the Guideline (The Fifth Draft) in 2012 and released the *Regulations on Prohibiting Abuse of Intellectual Property Rights to Eliminate or Restrict Competition* as a priority in April of 2015 based on the needs of law enforcement. During the drafting process of this Guideline of the Anti-Monopoly Committee of the State Council, the general framework of the Guideline (The Fifth Draft) previously drafted by SAIC obtained the general consent of the Committee as

well as other joint drafting departments, and becomes the frame foundation of the Guideline of the Committee in the future. Recently, combining with the latest developments in domestic and overseas intellectual property field and on the basis of large amounts of work of earlier stage, SAIC formulated the *Guideline (The Sixth Draft)*, contents thereof are mainly as follows:

The first is the preface which illustrates the necessity of formulating the Guideline;

The second is the general principles of the first chapter, which includes the clarification of the relationship between anti-monopoly and intellectual property rights, the relationship between the behaviors of abusing intellectual property rights and monopolistic behaviors, types of the behavior of abusing intellectual property rights to eliminate or restrict competition, the relationship between intellectual property rights and market dominant position, legal liability and remedies, scope of application, etc.

The third is the basic analytical framework of the second chapter which includes analytical methods, analytical factors, competitive affections, etc.

The fourth is the definition of relevant market of the third chapter which includes the general principle for defining relevant markets, relevant technology markets, relevant innovation markets, etc.

The fifth is the monopoly agreement involving intellectual property rights of the fourth chapter, which includes general provisions on the monopoly agreement involving intellectual property rights, production amounts restrictions between competitors, price restrictions between competitors, restrictions on R&D of technology between undertakings, exclusive grant-back obligations, market segmentation between competitors, joint refusal to license or refusal to deal of competitors, general provisions on agreements between non-competitors, price restrictions between non-competitors, restrictions on passive sales of the licensee by non-competitors, factors which should be considered in analyzing monopoly agreements involving intellectual property rights, safe harbor principle of monopoly agreements involving intellectual property rights, etc.

The sixth is the abuse of market dominant position involving intellectual property rights of the fifth chapter, which includes refusal to license intellectual property rights, tying involving intellectual property rights, unreasonable deals involving intellectual property rights, etc.

The seventh is the concentration of undertakings involving intellectual property rights of the sixth chapter (specific contents are omitted).

The eighth is the anti-monopoly analysis on several specific behaviors involving intellectual property rights of the seventh chapter, which includes the general analysis

on the patent exercising behavior during the process of standards establishment and implementation, anti-monopoly regulation involving injunctive relief related to standard essential patents, patent pool, the behavior of management organization of copyright, etc.

AUTHORITY

MOFCOM Year-End Review: Positively Promoting Anti-monopoly Enforcement and Protecting Fair Competition of the Market

January 15, 2016

In 2015, MOFCOM legally conducted anti-monopoly review of concentration of undertakings, and effectively protected the market order of fair competition.

To perfect relevant legislation and promote Review work institutionalized. To improve judicial efficiency and open politics, MOFCOM has summarized the Key point and difficult problem in Concentration antitrust scrutiny, to promote the revise work of *Anti-monopoly Law*. MOFCOM started the revise work of *Concentration of Undertakings declaration approaches* and *Concentration of Undertakings review approaches* and solicited comments from different area including relevant government departments, experts and lawyers. MOFCOM enacted and published the guidance document such as *Instruction of the name of business operator concentration*, *Model text of supervision trustee*, *The rules about Administrative penalties concentration of business operators not declare in accordance with the law* by cooperating with the implementation of the normative documents and related legislation

Investigate key cases and maintain the fair competition in market. By the end of 2015, MOFCOM has receive many concentration of undertakings cases, including 352 notifications, among which 335 was initiated and 319 was cleared, which created the highest record since anti-monopoly law published. In the closed cases, there are 317 unconditional approval cases and 2 conditional approval cases. In the case of conditional approving Nokia acquiring Alcatel-lucent, MOFCOM required Nokia to get the patent license by following the principle of fair, reasonable and non-discriminatory, and make promises regarding injunction and standard essential patents transfer, which maintained the competition orders of China's wireless communication network equipment market and Mobile terminal market. In the case of conditionally approving NXP acquiring Freescale, MOFCOM required NXP to divest RF power transistors business to maintain the Global RF power transistors market's competition order. MOFCOM inncreased efforts to investigate cases of illegal implementation of the concentration of business operators, and made penalties for 9 cases. To strengthen the supervision and execution of conditional case, MOFCOM made penalties for 2 cases which violated restrictive conditions.

Improve the Review Mechanism, Ensure Fair, Efficient and Transparent Enforcement. Per the request of the State Council with regard to improving administrative review work, MOFCOM smoothed the review mechanism, adjusted the previous consultation, initiation and review mechanism to the mechanism under which the review divisions divide their responsibilities according to the industries involved and cooperate and each division has full responsibilities of consultation, initiation and review. MOFCOM also comprehensively implemented measures of simplified procedure notification, electronic submission, online review of the whole process, etc. Under the circumstance that the number of cases grows rapidly, the average time of initiation has been shortened by 13% compared with that of 2014, and simple cases have generally been reviewed and closed within the preliminary review phase (within 30 days). MOFCOM will continue to raise the degree of transparent enforcement, and exploit the MOFCOM Government Affairs Publication Platform and publicize cases that are prohibited and that are approved with restrictive conditions as well as the relevant facts and reasons. MOFCOM will disclose the cases that have been approved unconditionally quarterly and publicize the penalty decisions for cases that have not been notified according to the law. MOFCOM will publicize consultation and report telephone numbers to receive the consultations and reports of cases that have not been notified according to the law from enterprises. MOFCOM will focus on law publicity and raise anti-monopoly publicity seminars to raise the anti-monopoly legal awareness of the officials of various levels of commercial authorities as well as the relevant enterprises.

Expand International Communications, Raise the Level of International Cooperation. MOFCOM has continuously expanded the scope of cooperation and has signed Anti-monopoly Cooperation Memorandum of Understanding with the competition authorities of Canada and South Africa. MOFCOM has positively conducted bilateral and multilateral anti-monopoly communications, held the tenth anti-monopoly policy dialogue between China and the EU, and signed Cooperation Practice Guide for Review of Concentration of Undertakings with the EU competition authority; MOFCOM participated in the fourth BRICS Country Competition Conference and reached agreement with the other BRICS countries with regard to the BRICS Countries Anti-monopoly Cooperation Memorandum of Understanding. MOFCOM has actively promoted the negotiations of free trade treaties such as the China-Japan-Korea Free Trade and the RCEP, etc.; MOFCOM participated in the China-US Economic Dialogue and the negotiations of the China-US Joint Commission on Commerce and Trade and reached multiple agreements. MOFCOM, together with the NDRC and the relevant authorities, has co-hosted dialogues with the industry and commercial sectors of the US and the EU, and has positively responded to the concerns of them.

Strengthen Communications and Collaboration, Effectively Play the Role of Committee Office. According to the legislation plan of the Anti-monopoly

Commission of the State Council, MOFCOM adjusted the member agencies to promote the drafting of the 4 guidelines including the *Guideline on the Prohibition of the Behavior of Abuse of IPR in Restricting and Eliminating Competition*, the *Enforcement Guideline on Article 46 and Article 47 of the AML*, *Guideline on the Procedures of Examining Monopoly Agreements and Abuse of Dominant Market Position*, and the *Guideline on Anti-monopoly in the Automotive Industry*. MOFCOM has organized experts to review the competition status of the electricity, internet, steel and automotive markets, and have launched the establishment of the database of the segmented market data of the above industries. MOFCOM has completed the organizational work of the Second Session of the Expert Consultation Group, and has supported the China Competition Policy Forum.

SAIC: Anti-monopoly Law Enforcement Treats All Market Players the Same

January 14, 2016

Yu Fachang, spokesperson of the SAIC, stressed when responding to the anti-monopoly special investigation of Microsoft that the SAIC, as an anti-monopoly law enforcement agency, treats all market players the same by strictly adhering to the law during enforcement, sufficiently listening to the opinions of the parties, giving the parties full rights of statement before issuing penalty opinions, and posting the cases on the website of the SAIC after the close of a case.

Since the implementation of the AML as of 2008, the SAIC initiated 58 cases, mainly focusing on public service areas such as water supply, electricity supply, gas and insurance, etc. As of now, the SAIC has closed 27 cases, terminated the investigation of 5 cases. The 58 cases initiated not only involved state-owned enterprises, but also involved foreign-owned enterprises and industry associations.

ACADEMIA

China Competition Policy and Law Annual Conference is Held, Revealing the Number of Anti-monopoly Cases in 2015

January 18, 2016

On January 15, 2016, the China Competition Policy and Law Annual Conference (2015/2016) and the Release Ceremony of the China Competition Law and Policy 2015 held by the Competition Policy and Law Professional Committee of the China WTO Research Institute took place in University of International Business and Economics.

Around 200 participants attended the annual conference, including leaders of the three anti-monopoly law enforcement authorities, justices of the Supreme People's Court of China, university scholars, corporate legal counsels and lawyers from domestic and international law firms. At the beginning of the New Year, together they reviewed the development of anti-monopoly in China in 2015 and forecasted the development in 2016.

With regard to the anti-monopoly law enforcement and judiciary, the leaders of the three anti-monopoly law enforcement authorities and the justices of the Supreme People's Court made the following introductions:

MOFCOM: 338 initiated cases of concentration of undertakings, among which 332 were closed (including 18 notifications that were withdrawn by undertakings). Besides, there were 9 cases that were imposed penalties for failing to notify according to the law.

NDRC: 12 anti-monopoly cases were reviewed by the NDRC and the local branches. Investigation and punishment of administrative monopoly have been strengthened, with 5 cases within the year.

SAIC: The AIC system initiated 12 cases altogether (4 cases of monopoly agreements and 8 cases of abuse of market dominant position), along with 8 cases were closed.

Court: Courts around the country reviewed 141 anti-monopoly lawsuits from January to November.

Legislation: With regard to the 6 anti-monopoly guidelines, the leaders of the NDRC stated that they would insist on drafting the guidelines "open door", ensuring to submit them for the review of the Anti-monopoly Commission of the State Council in June this year.

During the annual conference, the attendees spoke highly of the development of the competition policies in 2015, and referred to the "gradually put in place the fundamental role of competitive policies " of the Several Opinions of the Central Committee of the Communist Party of China and the State Council on Promoting the Price Mechanism Reform as the "breakthrough development".

Forecasting 2016, the leaders of the law enforcement authorities said that they would continue to strengthen law enforcement and promoted the normalization of law enforcement. At the same time, they would consummate the relevant legal system and pursue the careful law enforcement.

The annual conference also had discussions on hot issues such as regional trade treaties, the issue of competitive neutrality, the issue of the mobile internet and the intellectual property anti-monopoly and the anti-monopoly civil litigation, etc.

CASES

Shanxi Provincial Price Bureau: 32 Motor Vehicle Detecting Enterprises are Suspected of Horizontal Monopoly

December 31, 2015

The topic that the motor vehicle detecting price is increased in Xian has been paid attention to by the public and media in Shanxi Province for a long time. Recently the incident has made a breakthrough which can be seen as the answer to all the questioning.

Event review: on November 15, the new Price Catalogue of Shanxi Province classified the item of Charge for detecting the safety and technology of motor vehicle into the scope of market regulation; on December 17, two motor vehicle detecting stations from Xian announced to improve the price at first, increasing the price from 180 Yuan to 380 Yuan for detecting the medium or small size vehicles; on the next day, Shanxi Provincial Price Bureau held the warning meeting, where they declared that the motor detecting price is regulated by the market but the undertakings must not collude to increase the price. However, based on the investigation of related media, 27 motor detecting stations in Xian have all increased the price afterwards which as a result the motor detecting price in Xian is higher than 14 cities such as Beijing, Shanghai and Guangzhou. On December 26, Han Zhaoze, lawyer of Beijing Dacheng (Xian) Law Offices reported to apply for investigation on this to Shanxi Provincial Price Bureau. As of December 29, 15 motor detecting stations have recovered the detecting price to 180 Yuan, the governmental designated price.

On December 30, Shanxi Provincial Price Bureau formally published the investigation results on the incident. A person in charge in Antimonopoly Bureau of Shanxi Provincial Price Bureau introduced that after the authority get news that several motor detecting enterprises in Xian would collude to increase the price on December 18, they immediately made a secret investigation. On December 18, the provincial Price Bureau held a warning meeting convening the responsible persons of 27 motor detecting institutes in Xian with the provincial Public Security Department, provincial Environmental Protection Department and provincial Bureau of Quality and Technical Supervision and other relevant departments. In the meeting, the departments asked the institutes not to carry out illegal behaviors such as colluding with each other, manipulating the market price, price cheating and so on, except that they regulate their own price. However, on December 21, those detecting enterprises still increase the price. The authority has launched the antimonopoly investigation on the same day

after getting information that several detecting stations in Xian increased the price. After the investigation, the price increasing was organized by Xian Branch of Shanxi Motor Vehicle Detecting Association. In this price increasing, 27 motor detecting enterprises in Xian, 3 enterprises in Shangluo, 2 enterprises in Yangling has made price coordination, colluded to increase the price, enter into and execute price monopoly agreement. According to Anti-Monopoly Law of the People's Republic of China, it is prohibited to enter into and execute monopoly agreements which fix or change the product prices among undertakings with competition relationships. Thus the 32 enterprises mentioned above are alleged to enter into and execute the horizontal monopoly agreement.

Faced with the investigation results, relevant responsible staff of Xian Branch of Shanxi Motor Vehicle Detecting Association stated that they will accept the punishment if any. "It is illegal absolutely to collude to monopoly. It doesn't matter how much is the standard of the motor detecting price. We may have not understood some policies very clearly. The association will cooperate actively and never oppose."

The following is the full text of the Investigation of the Alleged Price Monopoly by Motor Detecting Enterprises Notified by Provincial Price Bureau published by Shanxi Provincial Price Bureau:

On December 30, provincial Price Bureau held press conference and announced the investigation of the alleged price monopoly by motor detecting enterprises as follows: According to the spirit of relevant documents by which the central government proceeds the reform of price mechanism, Shanxi Province has decided to carry out market regulation price for the price charge of detecting the safety and technology of motor vehicles from November 15, 2015 on.

At the beginning of December, provincial Price Bureau got the information that motor detecting industry in Xian would increase the price, provincial Price Bureau carried out the secret investigation and set the price variation as the key supervision objects. On December 18, provincial Price Bureau convened responsible staffs of motor detecting enterprises in Xian and held the price behavior warning meeting, asking the units to restrict its own price behaviors, and not to carry out price illegal behaviors such as colluding with each other, manipulating the market price, price cheating and so on. If any behavior such as colluding with each other to increase the price at the time point of price regulation was found, the Branch of Anti-Price Monopoly will impose punishment strictly with zero toleration.

Since December 21, motor detecting enterprises in Xian have increased price in succession. As the price rising range and time nodes are highly unified, the Branch of Anti-Price Monopoly of Shanxi Price Bureau has organized force to launch the antimonopoly investigation according to the legal procedures. After the deep investigation for a period of time, the authority has got core evident. It is showed by

evident that this price increasing is organized by the association and involved 27 enterprises in Xian, 3 enterprises in Shangluo and 2 enterprises in Yangling. They carried out price coordination, collusion of increasing the price, reaching and executing price monopoly agreement. According to Anti-Monopoly Law of the People's Republic of China, it is prohibited to enter into and execute monopoly agreements which fix or change the product prices among undertakings with competition relationships. Thus the 32 enterprises mentioned above are alleged to enter into and execute the horizontal monopoly agreement.

For the next step, the Branch of Anti-Price Monopoly of Shanxi Price Bureau will continue to proceed the investigation and punishment deeply according to Anti-Monopoly Law of the People's Republic of China, Price Law, Provisions of Anti-Price Monopoly and relevant requirements of Price Supervision and Anti-Monopoly Bureau of National Development and Reform Commission on the punishment of anti-price monopoly behaviors.

The Monopoly Agreement Case of the 12 Insurance Companies, such as China Pacific Life Insurance Co, Hubei Branch

December 30, 2015

Authorized by the State Administration for Industry and Commerce, in October 2014, Hubei Administrative Bureau for Industry and Commerce has initiated an investigation on 12 insurance companies (such as China Pacific Life Insurance Co., Ltd., Hubei Branch) engaged in the conduct of the monopoly agreements, and in June 2015, for the parties involved, made decisions of administrative penalty as follows:

| | Company name | Penalty decision |
|---|--|--|
| 1 | China Pacific Life Insurance Co., Ltd., Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 91,400 Yuan; 3、 Fines of up to 6% of sales last year (1.089 million Yuan), total 65,300Yuan; Total above 979,300 Yuan. |
| 2 | Funde Sino Life Insurance Co., Ltd Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 433,200 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 447,700 Yuan. |

| | | |
|----|---|--|
| 3 | Alltrust Property Insurance Company Ltd Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 433,200 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 447,700 Yuan. |
| 4 | Taikang Life Insurance Co., Ltd. Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 433,200 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 447,700 Yuan. |
| 5 | China Continent Property & Casualty Insurance Company Ltd. Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 433,200 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 447,700 Yuan. |
| 6 | China Pacific Property Insurance Co., Ltd Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 433,200 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 447,700 Yuan. |
| 7 | China Life Insurance Co., Ltd., Wuhan Hanyang District Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 433,200 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 447,700 Yuan. |
| 8 | PICC Property and Casualty Company Limited Wuhan Hanjiang Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 259,900 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 447,700 Yuan. |
| 9 | China Taiping Insurance Co., Ltd., Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 130,000 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 144,500 Yuan. |
| 10 | Unionlife Insurance Company, Ltd. Hubei | 1、 Shall immediately stop the illegal acts mentioned above; |

| | | |
|----|---|--|
| | Branch | 2、 Confiscate the illegal income 117,700 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 132,200 Yuan. |
| 11 | Ping An life Insurance Co., Ltd Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Confiscate the illegal income 420,100 Yuan; 3、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; Total above 434,600 Yuan. |
| 12 | Ping An Property Insurance Co. Ltd Hubei Branch | 1、 Shall immediately stop the illegal acts mentioned above; 2、 Fines of up to 2% of sales last year (726,000 Yuan), total 14,500 Yuan; |

The Monopoly Agreement Case of the 7 Insurance Companies, such as Yangzhou Aodu Concrete Co Ltd.

December 30, 2015

Authorized by the State Administration for Industry and Commerce, in April 2013, Hunan Administrative Bureau for Industry and Commerce initiated an investigation on 7 companies (such as Yangzhou AoDu Concrete Co Ltd.) engaged in the conduct of the monopoly agreements, and in November 2015, for the parties involved, made decisions of administrative penalty as follows:

| | Company Name | Penalty Decision |
|---|--|---|
| 1 | Yangzhou AoDu Concrete Co Ltd. | A fine of 30,000 Yuan, Ordered to correct the illegal act |
| 2 | Yangzhou HaiTeng Concrete Co Ltd. | Ditto |
| 3 | Yangzhou JiaXin Concrete Co Ltd. | Ditto |
| 4 | Yangzhou Coral High-tech Concrete Co Ltd. | Ditto |
| 5 | Yangzhou XiangAo Concrete Co Ltd. | Ditto |
| 6 | Yangzhou XinHai Concrete Co Ltd. | Ditto |
| 7 | Yangzhou ShuangYuan Building Materials Co Ltd. | Exemption from punishment, Ordered to correct the illegal act |

Eight Ro-ro Cargo International Shipping Enterprises was Imposed RMB 407 Million Yuan for Conducting Collusive Tendering

December 28, 2015

According to the clue provided by related enterprises, after more than a year of investigation, NDRC imposes punishment on eight ro-ro cargo international shipping enterprises including Nippon Yusen Kaisha ("NYK"), Kawasaki Kisen Kaisha Ltd("KL"), Mitsui O.S.K Lines Ltd("MOL"), Wacker Ro-Ro Shipping Co., Ltd("EUKOR"), China Wheel Wilson logistics Co., Ltd("WWL"), Chile South America Shipping Co., Ltd("CSAV"), Eastern Car Liner, Ltd.("ECL")and Chile shipping Cargo Shipping Co., Ltd("CCNI"), for conducting price monopoly agreement (collusive tendering), and they were imposed different fines from 4% to 9% of their respective revenues of ro-ro cargo international shipping service related to Chinese market in 2014. And the total fine amount is RMB 407 million.

The evidence shows that 8 shipping companies in the ro-ro cargo shipping (including automobiles, trucks, engineering machineries, etc.) services market between China and other countries or regions, have the consensus on mutual non-aggression of existing business in order to raise the freight charges, and frequently conducted bilateral or multilateral communications regarding to the tendering of import & export China marine line business by means of such as phone, meeting, dine together, email and visit, exchanged sensitive information, conducted price negotiations, negotiated tendering target, allocated customers and shipping lines, and reached and conducted many agreements of high price or no quoted price, and assisted shipping companies to get the ocean freight order. The intention of avoid antimonopoly supervisor of 8 shipping companies is very obvious, which adopt many improper ways. The price monopoly behaviors of 8 shipping companies lasting for a long time, after the implement of AML since 2008, the lasting time is more than 4 years. The influence of price monopoly behaviors conducted by the related shipping companies is big, with the scope of many shipping lines including North America-China, Europe-China, China-South America, China-Europe, Coastal waters of China, and many brand of autos and engineering machineries were involved.

The behaviors of reaching price monopoly agreement (collusive tendering) conducted by 8 shipping companies excludes and restricts the market competition, increases the rate of ocean freight, impairs the interest of importers & exporters of related cargo and the end consumers, which violates the regulation of AML regarding the violation of monopoly agreement reached and conducted by undertaking with competitive relationship to fix price and carve up the market. After finding out the case facts, NDRC has notified the 8 shipping companies twice about the fact and the evidence,

listened to the feedback and provided the opportunities of full expression to the companies. The 8 shipping companies realized the nature and harm of their violating behaviors and expressed the sorry and willing to undertake the legal responsibilities in accordance with AML. Meanwhile, they proposed for rectification measures: 1. Strengthen construction on the policy of antimonopoly compliance, such as set the chief compliance officer and build up the review mechanism; 2. Strengthen the education of antimonopoly compliance, such as issue the brochure of antimonopoly compliance; 3. Strengthen the technical construction of antimonopoly compliance, such as develop a software to screen the internal sensitive emails, and so on.

Based on the factors such as illegal nature, degree, lasting time of price monopoly agreement behaviors, NDRC respectively imposes fines on 8 shipping companies in accordance with law and their respective revenue of ro-ro cargo international shipping service related to Chinese market in 2014: (1) For lasting a long time, involved many brands and many affairs, NYK, KL and MOL's illegal behaviors are relatively serious, however, considering these companies voluntarily reported to NDRC about their illegal behaviors and provided significant evidences, which in accordance with leniency in Article 46 of AML, NDRC exempted NYK(1st company in accordance with leniency)'s fine; NDRC imposed penalty on KL(2nd company in accordance with leniency) as much as 4% of its revenue in 2014, which is RMB 23.9809 million; NDRC imposed penalty on MOL(3rd company in accordance with leniency) as much as 7% of its revenue in 2014, RMB 38.1211 million. (2) For lasting a long time, involved many brands and many affairs and serious nature, considering the provided the evidence which NDRC does not have, NDRC imposed penalty on EUKOR and WWL as much as 9% and 8% respectively of its revenue in 2014, which is RMB 284 million and RMB 45.0613 million. (3) For lasting long time but less brands and affairs involved, CSAV, ECL and CCNI only provided support and cooperation for the illegal behavior, thus the penalty imposed on these three companies are as follow: CSAV: 6%, RMB 3.0767 million; ECL: 5%, RMB 11.2686 million; CCNI: 4%, RMB 1.11984 million.

The SAIC Chongqing Branch Investigating the 1st Antitrust Case in Pharmaceutical Industry

December 23, 2015

Recently, Chongqing Qingyang Pharmaceutical Co., Ltd., which violated relevant provisions of AML and abused the dominant market position in allopurinol API market, was punished by Chongqing branch of the SAIC.

Allopurinol API is the basic component and core raw materials to produce allopurinol preparations (finished drugs). Allopurinol preparations are common drugs treating

hyperuricemia (also known as "gout"), there are many domestic companies manufacturing allopurinol preparations. Survey results show that: the party has dominant market position in the allopurinol API market, other manufacturers of allopurinol preparations rely heavily on party's supply of allopurinol API. In September 2013, the party signed the exclusive sales agent agreement on allopurinol APIs with another company, but failed to supply allopurinol API to the company and other customers within six months, which resulting in shortages of allopurinol API and increases of the price in the market, and thus have further serious impact on allopurinol preparations market, and causes serious difficulties for other allopurinol preparations manufacturers' production, and also causes the rising of allopurinol preparations price. Authorized by the SAIC, after verification of the relevant facts, Chongqing SAIC defines the behaviors conducted by the party constituting exclusive deal, one of abusive behavior of dominant market position in accordance with the law and imposes administrative penalties.

SAIC has always concerned about the anti-competitive issues closely related to people's livelihood and social sectors, in order to effectively protect competition in these industries, and to safeguard the consumer's interests. Pharmaceuticals are closely related to people's health. Currently, the monopoly behaviors in pharmaceutical industry have often occurred, not only causes adverse effects on competition in the industry, but also undermines the interests of consumers. The undertakings of pharmaceutical industry should receive a warning from the case, and shall regulate their own operating behaviors, and jointly safeguard the good order of market competition, to bring more benefits for consumers.

FOCUS

Microsoft Suffered another Chinese Anti-Monopoly Investigation, Inquiry Analysts Said the Penalty May be a New Record High if Found Illegal

January 7, 2016

According to Voice of China "News" reported, monopolistic behavior of major companies had always been strictly guarded by each country, Google, Apple, Qualcomm, etc. were all investigated by the European Union or other countries, Microsoft had also been investigated in China. On January 5, SAIC special investigating team conducted anti-monopoly investigation inquiry to Microsoft and the relevant person responsible for Microsoft Greater China, asking them to explain the major issues related to the electronic data acquired since the investigation of Microsoft's alleged monopoly case by SAIC and timely submitted a complete description material after the investigation inquiry.

It is worth mentioning that on September 1, 2014, SAIC announced on its official website that it conducted anti-monopoly investigation inquiry to Microsoft's high level management. At that time, the response from Microsoft's side was that: "We have always strictly abided by Chinese laws and regulations, and had been actively cooperating with the investigation conducted by SAIC." A year later, SAIC once again announced the antitrust investigation on Microsoft. And compared with last time, whether this investigation would be any different? How to identify the existence of monopolistic behavior of Microsoft?

This antitrust investigation against Microsoft dates back to 2013. In June of that year, there were companies reporting that Microsoft did not disclose completely about its Windows operating system and Microsoft Office software-related information, causing compatibility problems, tying and file verification and other issues, which was alleged violating the Chinese anti-monopoly law. SAIC immediately embarked on verification.

A year later, in June 2014, SAIC decided to conduct a formal investigation of Microsoft and released the progress of work successively. SAIC had organized anti-monopoly dawn raid on the premises of Microsoft in China several times and conducted anti-monopoly investigation inquiry to Microsoft's high level management. In more than a year after September 2014, the authority no longer released any

relevant progress of the investigation. Why SAIC once again announced antitrust investigation of Microsoft after so long silence? Yang Dong, executive director of the Institute of Competition Law of Renmin University of China, said that in fact the investigation never stopped.

Yang Dong introduced, said since Microsoft was such a big, world-class multinational company, the antitrust material facts and evidence were very complex and workload is big. It is understood that SAIC had been investigating, but did not make it public. The case was more complex, also more difficult, so it took a little more time.

For this investigation, Microsoft's relevant person responded: "We have always strictly abided by Chinese laws and regulations, and have been actively cooperating with the investigation conducted by SAIC."

From public to hidden and then public, which makes the anti-monopoly investigation very mysterious. But Yang Dong introduced the antitrust investigation was roughly divided into three stages, reporting and preliminary investigation stage, the formal investigation stage, and the final determination of penalty stage. And each stage had five aspects to identify.

Yang Dong introduced that the first, investigating to find its market definition. Whether there was a dominant market position, and in which relevant market it was identified to form monopoly power; second, its market share in the relevant market; and third, whether there was other aspects of the case, such as the situation of competitors, other dominance and so on, and assessed it comprehensively; fourth, indentifying whether there was behavior abusing its market dominance, such as tie-in, exclusion, raising prices and other acts; fifth, whether there was justification to abuse its market dominance, if there was legitimate justification, then four steps before will be exempted by the anti-monopoly law.

On March 18, 2010, MOFCOM announced to prohibit the acquisition of Huiyuan by Coca-Cola according to the Chinese anti-monopoly law. The merger became the first case was not adopted since the implementation of "Anti-Monopoly Law".

At the end of 2011, NDRC announced to conduct investigation of China Telecom and China Unicom for the two communication giants implementing price monopoly in the Internet access market, but the case protracted for a long time.

At the end of 2012, South Korea's Samsung, LG, CMO and AUO of China Taiwan region, and other six major international LCD panel makers was penalized for 353 million Yuan by China for the implementation of price monopoly. This is the first time for China to ticket a price penalty to foreign companies.

On September 11, 2014, NDRC announced that the FAW - Volkswagen Sales Co., Ltd.

in Hubei Province and some Audi dealers had been punished for the implementation of price monopoly, in which FAW - Volkswagen sales Limited Liability Company was fined 2.4858 billion and Hubei DingJie, Hubei Zhong Ji and other eight Audi distributors were fined a total of 29.96 million Yuan.

On February 10, 2015, NDRC decided to penalize Qualcomm 6.088 billion Yuan for its monopoly violations. This is the highest Chinese antitrust penalty ever.

Microsoft is the second American technology company after Qualcomm that is investigated in China by the antitrust authority. If Microsoft is determined violating the monopoly law, the penalty will be a record high.

The executive director of the Institute of Competition Law of Renmin University of China Yang Dong believes, based on its market transaction amount, turnover, time of entering into the Chinese market, the law-violation degree, if it is penalized, the penalty may be even higher than Qualcomm.

Yang Dong pointed out that it would be of importance and would be a milestone if Microsoft was finally found illegal and was imposed penalty. It has been more than six years since the implementation of the Anti-Monopoly Law in 2008, NDRC, SAIC and MOFCOM handled a lot of well-known cases and accumulated rich experience. Under such circumstances, Chinese law enforcement authorities imposed penalty on large multinational companies again marked the capacity of Chinese anti-monopoly law enforcement meeting international standards. For SAIC, it has not penalized such a large international company publicly, and it will also be a landmark case. In addition, Microsoft had greater influence than Qualcomm, so it will have an impact on the anti-monopoly law enforcement of the international community.

"Break Monopoly" Reform is Expected to Increase Efforts to Involve More Monopoly Industries in 2016

January 5, 2016

In 2016, with regard to power network, railway network, water supply network, metro network, bus network and other natural monopoly industries, "three barrels of oil", "three communications" and other administrative monopoly industries, "break monopoly" reform is expected to further accelerate.

Electric power system reform has achieved the separation of electricity and network as well as network and construction. The construction and operation of power plants have been liberalized, but the feed-in tariff has not been released, and also to promote the separation of network and shipment. The competitive business of State Grid and

China Southern Power Grid should be further liberalized.

The railway regime reform had realized the separation of network and trains many years ago. The rolling stock manufacturing was separated from the Ministry of Railways and further divided into two, namely, CSR, CNR and recently merged into CRRC. Railway network also needs to achieve the separation of transportation and network, namely separate the road network and operations. Due to the current environment, the rail freight capacity has been oversupply, which creates a rare window of reform to separate the network from operations.

Layout of the city subway network requires unification, but the specific construction and operation of the line can be implemented for franchising. The franchising body can be released, either state-owned enterprises or private enterprises, foreign companies, in order to promote competition and efficiency. It is understood that 25% of the London underground network operating costs is from London Government subsidy, 25% is from the central government subsidy, the remaining 50% of the cost is from a variety of income.

The operation of urban public transport network is a similar situation. The operation of public transport network in some cities have been liberalized for trial implementation of franchise, but the situation appears to recovery in recent years, and even retreats to completely rely on government subsidies. No competition, low efficiency, wastes, and also prone to corruption. Transport for London rules the underground tube system, public transportation and the most important indicator of their assessment of enterprises' business is "user experience." This is concept is worth of our study.

The administrative monopoly industries are more than "three barrels of oil", "three communications", any entry and exit of industries if regulated through administrative means will carry administrative monopoly color. There was a time in the past, for example, the provincial Tobacco Monopoly Bureau only allowed sales of cigarettes produced by cigarette factories in its own province within its jurisdiction. This is a typical type of administrative monopoly, implementing administrative monopoly by administrative region to conduct market segmentation. The competitive business of "three barrels of oil" and "three communications" also need to be further open and qualified competitors shall be introduced.

REN Yong (John), the Managing Partner of T&D Received the Interview of CCTV for the 1st Antitrust Case in Ro-Ro Cargo Shipping Area

December 29, 2015

In the end of 2015, NDRC imposed fines on 8 ro-ro international cargo shipping companies for reaching and conducting price monopoly agreement (collusive tendering) behaviors. The 8 companies were imposed different fines from 4% to 9% of their respective revenue of ro-ro cargo international shipping service related to Chinese market in 2014, the total fine amount is RMB 407 million. The case was initiated in August 2014, and closed in December 2015, lasting 1 year and 4 months, which can be called the 1st antitrust case in ro-ro cargo shipping area.

Mr. REN Yong (John), the managing partner of T&D has received the interview of CCTV for the punishment determination of this case, Mr. John REN introduced and explained the procedure and details of this investigation, and especially made comments on surrender and exemption regarding involved companies in related jurisdiction. Mr. John REN expressed that: “After constitution of price collusion, being the first one to surrender in the 1st jurisdiction needs great resolution of the company. The next surrender in other jurisdictions would depend on comprehensive consideration of each company.”