

China Monthly Antitrust Update

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Contents

Legislation	3
The State Council Passes Anti-Unfair Competition Law (Revised Draft) to the Standing Committee of the National People's Congress.....	3
Authorities	4
PSAMB of NDRC Signs a Competition Policy and Antitrust Cooperation Agreement with the DUFE	4
Zhang Handong, Director-General of the PSAMB of NDRC Invited to Report on the Fair Competition Review System at CAG	4
Hunan DRC Organizes a Fair Competition Review System Training Program.....	4
CEB of SAIC Sends Personnel to Attend the 10th Anti-Monopoly and Regulation Economics Seminar.....	5
Director-General of the PSAMB of NDRC Zhang Handong: Drafting Work of Antitrust Guidelines for Auto Industry Basically Completed	5
2016 Commercial System Anti-Monopoly Training Program Held in Guangdong	5
CEB of SAIC Meets with A Delegation of AIPLA.....	5
PSAMB of NDRC and AMB of MOFCOM Meet with A Delegation of CCS	6
Public Enforcement	7
SAIC Fines Tetra Pak Group for Abuse of Dominant Market Position.....	7
SAIC Releases Administrative Penalty Decisions on Sunyard, Zhaori and Haijiye for Monopoly Agreements.....	7
Merger Control	8
MOFCOM Releases 32 Streamlined Cases in November	8
Private Actions	9
The First Public Interest Litigation Against the Monopoly Enterprise in the Consumption Area Withdraw	9
Beijing Court Ends A Follow-up Antitrust Litigation Claimed by Milk Powder Consumer	9
Academia	10
2016 Annual Conference on China Economy and International Cooperation Held in Beijing Fair Market Competition and Antitrust Discussed	10
Dentons Team	11
Ken Dai Invited to Attend the Shanghai Law Society Competition Law Research Association 2016 Annual Conference and Delivers a Keynote Speech	11
Jet Deng Attends “Forum on Global M&A, Corporate Governance, Development and Innovation in Capital Market” Hosted by Dentons and Delivers a Speech	11
Jet Deng Invited to Deliver a Keynote Speech for the Law School Student of Beijing Foreign Studies University.....	11

Legislation

The State Council Passes Anti-Unfair Competition Law (Revised Draft) to the Standing Committee of the National People's Congress

On November 23, 2016, the executive meeting of the State Council signed off *Anti-Unfair Competition Law of the People's Republic of China (Revised Draft)* (“**Revised Draft**”), which aims to crack down unfair competition according to the law, protect the lawful rights and interests of operators and consumers, as well as create a fair market environment conducive to entrepreneurship and innovation. The Revised Draft perfected and enriched the legal definition of unfair competition, supplemented the provisions of combating commercial bribery, strengthening the business secrets protection and anti-unfair competition in the Internet field, strengthening the civil liability for compensation, and increasing the credit and administrative punishment on illegal acts. The meeting decided to submit the Revised Draft to the Standing Committee of the National People's Congress for deliberation.¹

¹http://www.gov.cn/guowuyuan/2016-11/24/content_5137110.htm

Authorities

PSAMB of NDRC Signs a Competition Policy and Antitrust Cooperation Agreement with the DUFE

On November 28, 2016, Price Supervision Anti-Monopoly Bureau (“**PSAMB**”) of the National Development and Reform Commission (“**NDRC**”) signed a competition policy and antitrust cooperation agreement with Dongbei University of Finance and Economics (“**DUFE**”). The PSAMB and DUFE set up "Anti-monopoly Research and Personnel Training Base", and both parties will develop deep cooperation in the decision-making consulting, theoretical research, personnel training and other aspects. In addition, Zhang Handong, Director-General of the PSAMB also delivered a keynote report on fair competition review system for teachers and students of DUFE, and introduced the background, significance, main content of fair competition review system, as well as the competition policy and anti-monopoly law enforcement.²

Zhang Handong, Director-General of the PSAMB of NDRC Invited to Report on the Fair Competition Review System at CAG

On November 17, Zhang Handong, Director-General of the PSAMB of NDRC was invited to deliver a report on fair competition review system at Chinese Academy of Governance (“**CAG**”). He systemically introduced the fair competition review system, the background, significance, specific content of fair competition review system, as well as the competition policy and anti-monopoly law enforcement.³

Hunan DRC Organizes a Fair Competition Review System Training Program

On November 17, Hunan DRC organized the fair competition review system training, in order to implement the fair competition review system. From the practical level, Deputy Director-General of the PSAMB of NDRC Li Qing delivered a counseling report at the meeting, which analyzed the operation norms and the work of fair competition review carried out at home and abroad. He also pointed out the importance and necessity of establishing the fair competition review system and made recommendations to the future work combining the present situation of China's competition policy.⁴

²http://jjs.ndrc.gov.cn/gzdt/201611/t20161129_828241.html

³http://jjs.ndrc.gov.cn/gzdt/201611/t20161118_827045.html

⁴http://www.hnfgw.gov.cn/xxgk_70899/gzdtf/gzdt/201611/t20161117_3472677.html

CEB of SAIC Sends Personnel to Attend the 10th Anti-Monopoly and Regulation Economics Seminar

On November 12, the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (“CEB”) of the State Administration for Industry and Commerce (“SAIC”) sent personnel to attend the 10th Anti-Monopoly and Regulation Economics Seminar held in Jinan, Shandong Province. On the seminar, personnel of the CEB introduced the legislation and law enforcement in the field of competition, and the situation of promoting to establish and implement the fair competition review system, etc.⁵

Director-General of the PSAMB of NDRC Zhang Handong: Drafting Work of Antitrust Guidelines for Auto Industry Basically Completed

From November 9 to 11, “2016 China Auto Industry Annual Conference and Exposition”, which was organized by China Auto Dealers Association, was held in Zhuhai International Conference and Exhibition Center. On the conference, Director-General of the PSAMA of NDRC, Zhang Handong expressed that the purpose of *Antitrust Guidelines for Auto Industry* (“Guidelines”) is to provide guidance on the legitimacy assessment of common restrictions on competition in the Auto industry and to provide a clearer and more reasonable expectation for the market. The drafting working of the Guidelines has come to an end and other relevant work has been carried out in an orderly fashion.⁶

2016 Commercial System Anti-Monopoly Training Program Held in Guangdong

From November 10 to 11, the Anti-Monopoly Law Training Program was held in Guangzhou. Deputy Director-General of the Anti-Monopoly Bureau (“AMB”) of Ministry of Commerce (“MOFCOM”) Han Chunlin delivered an opening speech and introduced the fair competition review system. About 100 representatives from local commerce departments, central state-owned enterprises (“SOEs”) directly under the State-owned Assets Supervision and Administration Commission of the State Council (“SASAC”), local SOEs, business associations and business from Guangdong Province participated in the training.⁷

CEB of SAIC Meets with A Delegation of AIPLA

On November 2, the CEB of SAIC met with a delegation led by Kevin Rhodes, Chairman of American Intellectual Property Law Association (“AIPLA”). Both parties discussed deeply on the drafting of *Anti-Monopoly Guidelines on Abuse of Intellectual Property*, “the

⁵http://www.saic.gov.cn/fldyfbzdjz/gzdt/201611/t20161114_172244.html

⁶<http://auto.sohu.com/20161110/n472855564.shtml>

⁷<http://fldj.mofcom.gov.cn/article/xxfb/201611/20161101760088.shtml>

Provisions on Prohibiting the Abuse of Intellectual Property Rights to Preclude or Restrict Competition”, the application of refusal permissions in the Anti-Monopoly Law, the Latest Progress and so on.⁸

PSAMB of NDRC and AMB of MOFCOM Meet with A Delegation of CCS

On October 31, Zhang Handong, Director-General of the PSAMB of NDRC⁹, and Wu Zhenguo, Director-General of the AMB of MOFCOM¹⁰ met with a delegation led by Du Hanli, Chairman of Competition Commission of Singapore (“CCS”). On November 1, Deputy Director-General of the PSAMB of NDRC Li Qing met with Du Han Li. Both parties exchanged opinions on fair competition review system and the latest progress in competition policy and the drafting of anti-monopoly guidelines.

⁸http://www.saic.gov.cn/fldyfbzdzj/gjil/201611/t20161102_172035.html

⁹http://jjs.ndrc.gov.cn/qzdt/201611/t20161101_825366.html

¹⁰<http://fldj.mofcom.gov.cn/article/xxfb/201610/20161001542545.shtml>

Public Enforcement

SAIC Fines Tetra Pak Group for Abuse of Dominant Market Position

On November 16, 2016, SAIC released an administrative penalty decision on the Tetra Pak Group (“**Tetra Pak**”) in accordance with law for its abuse of dominant market position and imposed a fine of nearly 668 million. SAIC found that Tetra Pak had abused its dominant market positions in packaging equipment market of aseptic carton package for liquid foodstuff, technology service market for packaging equipment of aseptic carton package for liquid foodstuff, and the composite packaging materials market of aseptic carton package for liquid foodstuff, by tying without justifications, restricting dealing without justifications and providing loyalty discounts which excluded and restricted competition, therefore violating Article 17 of the Anti-Monopoly Law.¹¹

SAIC Releases Administrative Penalty Decisions on Sunyard, Zhaori and Haijiye for Monopoly Agreements

On November 4, the State Administration for Industry and Commerce of the People’s Republic of China (“**SAIC**”) released the penalty decisions on Sunyard System Engineering Co, Ltd. (“**Sunyard**”), Beijing Zhaori Technology Ltd. (“**Zhaori**”) and Shanghai Haijiye High-tech Ltd. (“**Haijiye**”) by Anhui Administration of Industry and Commerce (“**AIC**”) on September 18, 2016, for their reaching and implementing monopoly agreements. According to the penalty decisions, the three companies conducted concerted practice, including but not limited to allocating the sales market of payment ciphers, as well as fixing and consistently adjusting the price, thus constituting reaching and implementing monopoly agreements. Anhui AIC confiscated illegal income of the three companies and imposed a fine of 8% of the turnover on payment ciphers respectively. Fine on Sunyard totaled 4.20 million; fine on Zhaori totaled 5.64 million; fine on Haijiye totaled 19.93 million.¹²

¹¹<http://www.saic.gov.cn/zwgk/gggs/jzzf/cfjd/201611/P020161116513025279743.pdf>

¹²http://www.saic.gov.cn/zwgk/gggs/jzzf/201611/t20161104_172076.html

Merger Control

MOFCOM Releases 32 Streamlined Cases in November

Up to November 30, 2016, MOFCOM has released 32 streamlined cases in November on its website, with a total amount reaching 575 so far.¹³

¹³<http://fldj.mofcom.gov.cn/article/jyzizjyaigs/>

Private Actions

The First Public Interest Litigation Against the Monopoly Enterprise in the Consumption Area Withdrew

On November 8, 2016, Nanjing Intermediate People's Court approved the withdrawal from Jiangsu Consumers' Association. The case is the first public interest litigation against monopoly enterprise in the consumption area. In the case, Jiangsu Consumers' Association held that without negotiation with consumers, Nanjing Water Group Co., Ltd. ("**Water Group**") fixed the penalty on overdue payment as 0.5% per day of the total payable amount, which was significantly too high. After negotiation, Water Group agreed to adjust the penalty, and then Jiangsu Consumers' Association withdrew the case.

Beijing Court Ends A Follow-up Antitrust Litigation Claimed by Milk Powder Consumer

On November 4, China Judgments Online released the final judgment on a follow-up antitrust litigation claimed by milk powder consumer. On August 7, 2013, NDRC released penalty decision on Abbott and the other eight milk powder manufacturers for resale price maintenance on the downstream operators. After that, a consumer Tian Weijun sued Abbott and Carrefour (Shuangjing) to the Beijing Intellectual Property Court for Carrefour (Shuangjing) and Abbott reaching price monopoly agreement, thus causing him to purchase Abbott infant formula at an unfairly high price. Therefore, the plaintiff claimed for damage and compensation for reasonable expenses from both defendants. The plaintiff failed both in the first trial before the Beijing Court of Intellectual Property (on December 31, 2015) and in the second trial in the Beijing Higher People's Court (on August 22, 2016).¹⁴

¹⁴[http://wenshu.court.gov.cn/content/content?DocID=7ad234f9-cfdc-453a-ae0a-a8f22dc22004&KeyWord=\(2016\)京民终214号](http://wenshu.court.gov.cn/content/content?DocID=7ad234f9-cfdc-453a-ae0a-a8f22dc22004&KeyWord=(2016)京民终214号)

Academia

2016 Annual Conference on China Economy and International Cooperation Held in Beijing Fair Market Competition and Antitrust Discussed

From November 26 to 27, 2016, “Annual Conference on China Economy and International Cooperation - New Bashan Cruise Conference 2016” was held in Beijing, on which the topic of fair market competition and antitrust was discussed. The Party member of SAIC, Deputy Director-General of SAIC Wang Jiangping and Director-General of the PSAMA of NDRC Zhang Handong participated in the conference and gave speeches.

Dentons Team

Ken Dai Invited to Attend the Shanghai Law Society Competition Law Research Association 2016 Annual Conference and Delivers a Keynote Speech

On November 20, 2016, "2016 Annual Conference of Shanghai Law Society Competition Law Research Association" in Gubei Campus of the Shanghai University of International Business and Economics ("SUIBE"), with the theme of "Competition Policy in Global Trade and Economic Governance". The meeting invited professionals including famous experts and scholars in the field of competition law, judges, administrative enforcement experts, lawyers and in-house counsels. Ken Dai, Co-chair of Dentons China Antitrust Team was invited to participate in the conference and delivered a keynote speech on "Global Compliance of Antitrust Law". He shared his practical experiences from four aspects, i.e. the world's more extensive and strict anti-monopoly law enforcement, internationalization of Chinese enterprises, current practice, as well as outlook and suggestions.

Jet Deng Attends "Forum on Global M&A, Corporate Governance, Development and Innovation in Capital Market" Hosted by Dentons and Delivers a Speech

On November 19, "Forum on Global M&A, Corporate Governance, Development and Innovation in Capital Market", hosted by Capital Market Division and Committee of Capital Market of Dentons Law Offices, was held in Grand Millennium Beijing. Nearly 400 lawyers, experts, etc. from all over the world participated in the forum. Jet Deng, Co-chair of Dentons China Antitrust Team, delivered a speech on antitrust notification and review. Based on his experience, he introduced to the participants the conditions of antitrust notifications in different jurisdictions as well as various kinds of merger remedies which could be adopted.

Jet Deng Invited to Deliver a Keynote Speech for the Law School Student of Beijing Foreign Studies University

On November 17, Jet Deng, Co-chair of Dentons China Antitrust Team was invited to deliver a keynote speech for Beijing Foreign Studies University Law School students on the topic of "Anti-monopoly Legal Practice and Development Trend: from the Perspective of Lawyers". From the perspective of practice, Jet systematically combed the main system of the antitrust law from three aspects: the substantive stipulation, the procedure stipulation and the remedies. Besides, he introduced four main anti-monopoly businesses including anti-monopoly notification, dealing with investigation, civil litigations and compliance. He

also explained the close relationship among the antitrust business and intellectual property, mergers and acquisitions, foreign investment, capital markets, etc.

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