

# China Monthly Antitrust Update

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## Co-Chairs

### Jet Deng

Partner

Beijing Office

Tel.: 010 - 5813 7038

Email: zhisong.deng@dentons.cn

### Ken Dai

Partner

Shanghai Office

Tel.: 021 - 5878 1965

Email: jianmin.dai@dentons.cn

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## Legislation

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### The State Council Approves to Establish Inter-Ministerial Liaison System for Fair Competition Review

On January 24, 2017, the General Office of the State Council printed and issued *the Correspondence on Approval of Establishment of Inter-Ministerial Liaison System for Fair Competition Review*, in which the State Council appointed the National Development and Reform Commission (“**NDRC**”) as the lead agency for the establishment of Inter-Ministerial Liaison System for Fair Competition Review (“**the System**”) and meanwhile, regulated major responsibilities, member departments, implementation rules and requirements of the System. The System will be beneficial to cooperation between ministerial departments during implementation of fair competition review and further improvement of market competition order.<sup>1</sup>

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<sup>1</sup> [http://www.gov.cn/zhengce/content/2017-01/24/content\\_5162929.htm](http://www.gov.cn/zhengce/content/2017-01/24/content_5162929.htm).

## Authorities

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### **PSAMB of NDRC Meets with A Delegation of AdvaMed**

On January 18, 2017, Li Qing, Deputy Director-general of the Price Supervision and Anti-Monopoly Bureau (“**PSAMB**”) of NDRC, met with a delegation led by Ralph F. Ives, Executive Vice President of the US-based Advanced Medical Technology Association (“**AdvaMed**”). Both parties communicated in aspects of deeply carrying out the research on competition effects of policies relevant to medical device and fair competition improvement in medical device sector. <sup>2</sup>

### **Officials from CEB of SAIC Participate Anti-Monopoly Seminar Held by USC**

From January 13 to 14, the anti-monopoly seminar on the topic of “Anti-Monopoly Enforcement under Globalization” (“**the Seminar**”) was held by Gould Law School of University of South California. Nearly 50 attendees participated in the Seminar, including officials of authorities from several countries and representatives of multinational corporations. Officials from the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (“**CEB**”) of the State of Administration for Industry and Commerce (“**SAIC**”) participated the Seminar, delivered speeches during the officials’ panel, introduced recent enforcement of SAIC and answered questions raised by the participants. <sup>3</sup>

### **SAIC Releases Situation about Special Action to Regulate Anti-Competitive and Monopolistic Acts of Public Utility Enterprises**

On January 12, SAIC held release conference about special action to regulate anti-competitive and monopolistic acts of public utility enterprises. Mr. Yu Fachang, Press Spokesman and Director of General Office of SAIC, released that during the enforcement towards sectors of water supply, electricity supply, gas supply, public traffic, funeral and interment, etc., SAIC and its local counterparts (“**AIC system**”) had filed 1267 cases totally, 585 of which had been closed. The amount of penalty and confiscation reached CYN 167 million and the amount of drawback, compensation and interests saved reached CYN 470 million. Meanwhile, AIC system had suggested local and related departments to abolish the

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<sup>2</sup> [http://jjs.ndrc.gov.cn/qzdt/201701/t20170119\\_835591.html](http://jjs.ndrc.gov.cn/qzdt/201701/t20170119_835591.html).

<sup>3</sup> [http://www.saic.gov.cn/fldyfbzdjz/qzdt/201701/t20170117\\_174430.html](http://www.saic.gov.cn/fldyfbzdjz/qzdt/201701/t20170117_174430.html).

policies and regulations which were harmful to competition. Besides, several industrial and systematic problem about competition restriction and monopoly had been found through the special enforcement. <sup>4</sup>

### **Research Group from National Strategy Institute of Tsinghua University visits SAIC**

On January 9, CEB of SAIC met a research group from National Strategy Institute of Tsinghua University. CEB of SAIC introduced the investigation process and relevant professional issues of the “Tetra Pak Case”. Meanwhile, CEB of SAIC analyzed the influences of the “Tetra Pak Case” toward enterprises, sectors and environment of China’s antitrust enforcement. National Strategy Institute established by Tsinghua University is an institute which devotes to commonweal research. It’s planning to compose a research report in aspect of China’s antitrust practice. <sup>5</sup>

### **NDRC Reminds and Warns Household Appliances Manufactures to Conduct Fair and Orderly Competition**

On 9 January, PSAMB of NDRC held a reminding & warning meeting about price regulation and policy in home appliances industry. The meeting was attended by representatives of companies manufacturing air conditioners, refrigerators, television sets, and small home appliances as well as major e-commerce platform operators. The attendees were asked by the official of PSAMB to compete fairly and orderly and refrain from vertical and horizontal price-related monopolistic conduct, abuse of market dominance, artificially pushing up prices, predatory pricing for the purpose of excluding competitors, and price fraud by means of false or misleading method. Violators will face strict sanctions in accordance with the Price Law and the Anti-Monopoly Law. <sup>6</sup>

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<sup>4</sup> [http://www.legaldaily.com.cn/index/content/2017-01/11/content\\_6951837.htm?node=20908](http://www.legaldaily.com.cn/index/content/2017-01/11/content_6951837.htm?node=20908).

<sup>5</sup> [http://www.saic.gov.cn/fldyfbzdjz/qzdt/201701/t20170110\\_174156.html](http://www.saic.gov.cn/fldyfbzdjz/qzdt/201701/t20170110_174156.html).

<sup>6</sup> [http://jjs.ndrc.gov.cn/qzdt/201701/t20170111\\_834826.html](http://jjs.ndrc.gov.cn/qzdt/201701/t20170111_834826.html).

## Public Enforcement

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### **Deyang AIC Penalizes Natural Gas Limited Corporation over Competition Restrictive Conducts**

On January 19, 2017, the Sichuan Administration for Industry and Commerce posted a case on its website, which indicates that the Deyang City Administration for Industry and Commerce (“**Deyang AIC**”) decided to penalize a natural gas limited corporation over the anti-competition conduct, instruct the corporation to correct the violation immediately and impose a fine. Relied on its dominance, the corporation restricted customers’ knowing right, choosing right and bargain right, thus excluding other qualified undertakings from fair competition in the markets of natural gas construction designing, inspecting and installing, which constitute anti-competition conducts. Pursuant to Article 23 of Anti Unfair Competition Law, Deyang AIC instructed the corporation to correct its illegal conducts immediately and imposed a fine. This is the first typical case closed that involves restrictive conducts of public utilities since the implementation of “Red Shield & Thunder Enforcement of 2017”.<sup>7</sup>

### **Shandong AIC Suspends Abuse of Dominance Probe Against Local Power Supplier**

On January 4, according to a decision published by SAIC, the Shandong Administration for Industry and Commerce (“**Shandong AIC**”) has suspended an investigation into Shandong Power Company Yantai City Mouping District Power Supply (“**Mouping District Power Supply**”). In July 2014, Shandong AIC received a complaint alleging that Mouping District Power Supply took advantage of a local government fee charging policy to engage in monopolistic conduct by restricting privately held companies from participating in the construction of power supply facilities for real estate developments in Mouping district of Yantai city. After receiving due authorization from the SAIC, Shandong AIC launched an anti-monopoly investigation into the power supplier on September 18, 2014 in response to the complaint. The investigation showed that the company was the only power supplier in Mouping district. During the investigation, Mouping District Power Supply admitted having designating the exclusive party to construct temporary power supply facilities for newly-built residential compounds. It also admitted that its conduct had adversely impacted the market competition. Mouping District Power Supply said it would take active corrective measures, and requested Shandong AIC to suspend the investigation. After concluded that Mouping

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<sup>7</sup> [http://www.scaic.gov.cn/zwgk/xwdt/szdt/201701/t20170119\\_30257.html](http://www.scaic.gov.cn/zwgk/xwdt/szdt/201701/t20170119_30257.html).

District Power Supply had actively cooperated in the probe and prepared a remedy proposal on the timely elimination of the restrictive effects on competition, Shandong AIC decided to suspend the probe and ordered the company to fulfill its commitments and submit implementation reports on time. Otherwise, Shandong AIC will resume the investigation.<sup>8</sup>

### **Shanxi DRC and Guizhou DRC Penalize Vehicle Inspection Firms over Price Collusive Conducts**

On January 4, NDRC released two cases on its website - Shanxi Development and Reform Commission (“DRC”) and Guizhou DRC recently conducted investigations and imposed administrative penalties on companies providing motor vehicle inspection services for allegedly entering into and implementing price monopoly agreements in their respective provinces. On June 15, 2015, 18 vehicle inspection services providers in Changzhi raised service fees collectively, which followed the province’s decision in May 2015 to allow the market to determine the inspection fees. Shanxi DRC received a complaint and thus launched an investigation, in which it found that 18 companies held a meeting prior to the fee increase to reach an agreement in aspects of charging items, charging norms and implementation. Each of the 18 firms was, therefore, fined an amount corresponding to 3%-8% of its sales in the previous year based on its role in the anticompetitive conduct. The combined fines amounted to CNY 1.31 million. In the other case, Guizhou DRC found that five vehicle inspection service providers in the urban area of Bijie reached an agreement to unify their service fee charging norms on February 1, 2016, and imposed penalty measures to ensure implementation. Before arriving at the agreement, they met for several times from December 2015 to discuss the matter. Based on the nature of the conduct and the duration of the violations into consideration, Guizhou DRC imposed fines amounting 1%-6% of the providers’ respective sales in the previous year. The cumulative fines amounted to CNY 276,900.<sup>9</sup>

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<sup>8</sup> [http://www.saic.gov.cn/zwgk/gggs/jzzf/201701/t20170104\\_173944.html](http://www.saic.gov.cn/zwgk/gggs/jzzf/201701/t20170104_173944.html).

<sup>9</sup> [http://jjs.ndrc.gov.cn/figld/201701/t20170104\\_834259.html](http://jjs.ndrc.gov.cn/figld/201701/t20170104_834259.html).

## Merger Control

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### MOFCOM Releases 20 Streamlined Cases in January

Up to January 31, 2017, the Ministry of Commerce (“MOFCOM”) has released 20 streamlined cases in January on its website, with a total amount reaching 614 so far.<sup>10</sup>

### MOFCOM Releases Figures of Concentration of Undertakings Handled in 2016

On January 5, MOFCOM held the routine press conference, on which Mr. Sun Jiwen, Press Spokesman of MOFCOM, introduced the general picture of review of concentration of undertakings conducted by MOFCOM during 2016. In 2016, MOFCOM received 352 cases of notification of concentration, 360 of which were accepted and 395 of which were closed. The number of cases handled by MOFCOM in 2016 reached the top since the effectiveness of the AML. From the aspect of industry distribution, the proportion of manufacturing industry cases reached 53% and the number semiconductor industry cases, communication industry cases and high-end manufacturing industry cases increased fast thereinto. From the case type point of view, horizontal merger cases took the majority proportion, which reached 40%. In 2016, 324 cases were closed during preliminary review, the proportion of streamlined cases reached 76%, 98.6% of which were closed during preliminary review.<sup>11</sup>

### MOFCOM Releases Unconditionally Cleared Cases in the 4th Quarter of 2016

On January 4, MOFCOM released on its website a list of unconditionally cleared cases in the fourth quarter of 2016, which includes 92 cases in total.<sup>12</sup>

### MOFCOM Penalizes Canon for Failing to Duly Notify Concentration

On January 4, MOFCOM issued an administrative penalty decision, penalizing Canon for its failing to notify its acquisition of Toshiba Medical System, Inc. MOFCOM assessed the impact of the acquisition and concluded that the concentration would not eliminate or restrict competition, but MOFCOM fined Canon CYN 300,000 pursuant to Articles 48 and 49 of AML and Article 13 of *Interim Measures for the Investigation and Handling of the Failure to Notify*

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<sup>10</sup> <http://fdj.mofcom.gov.cn/article/jyziziyajgs/>.

<sup>11</sup> <http://www.mofcom.gov.cn/article/ae/slfw/201701/20170102496823.shtml>.

<sup>12</sup> <http://fdj.mofcom.gov.cn/article/zcfb/201701/20170102495842.shtml>.



*Concentration of Undertakings in Accordance with the Law.* <sup>13</sup>

### **MOFCOM Conditionally Approves Abbott's Proposed Acquisition of St. Jude Medical**

On December 30, 2016, MOFCOM issued No.88 Announcement of 2016, in which it conditionally approved the proposed acquisition of all shares of St. Jude Medical, Inc. ("**St. Jude Medical**") by Abbott Laboratories ("**Abbott**"). MOFCOM believed that such concentration might eliminate and restrict competition in the market of vascular closure device of China. Therefore, MOFCOM required St. Jude Medical to fully divest its Vascular Closure Devices business. <sup>14</sup>

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<sup>13</sup> <http://fdj.mofcom.gov.cn/article/ztxx/201701/20170102495433.shtml>.

<sup>14</sup> <http://fdj.mofcom.gov.cn/article/ztxx/201612/20161202440204.shtml>.

## Private Actions

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### **Apple Files a Lawsuit to Beijing Intellectual Property Court against Qualcomm**

On January 25, 2017, Apple Inc. (“**Apple**”) filed a lawsuit to Beijing Intellectual Property Court against Qualcomm Inc. (“**Qualcomm**”), alleging Qualcomm abused its dominance in the chip industry and seeking CYN 1 billion. Apple also filed a second lawsuit against Qualcomm which accused it of failing to live up to promises made to license "standard essential patents" broadly and inexpensively. Apple followed with a related lawsuit in the U.S. which asked a federal court in California for USD 1 billion in promised rebates and accused Qualcomm of overcharging for chips. <sup>15</sup>

### **Nanjing and Suzhou Set up Intellectual Property Courts**

On January 19, Nanjing and Suzhou set up intellectual property court respectively, which are authorized to accept intellectual property civil cases in first instance that relate to monopolistic dispute. <sup>16</sup>

### **Chengdu Sets Up Intellectual Property Trial Court**

On January 10, Chengdu set up intellectual property trial court, which is authorized to accept intellectual property civil cases in first instance that relate to monopolistic dispute. <sup>17</sup>

### **Guangdong Higher People's Court Affirms the Decision of Lawsuit against two Food Corporation for Abusing Dominant Market Position**

On November 8, 2016, the appellant Huazhou City Yangmei Chenyawang Planting and Breeding Cooperatives (“**the appellant**”) sued Huazhou City Food Corporation and Huazhou City Yangmei Food Corporation for abusing their dominant market position and refusing to enter into transaction with the appellant. Maoming City Intermediate People's Court of Guangdong refused to accepted the case for jurisdiction unauthorized. The appellant refused to accepted the decision and filed an appeal. Guangdong Higher People's

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<sup>15</sup> <http://www.reuters.com/article/us-apple-qualcomm-china-idUSKBN159264>.

<sup>16</sup> <http://www.jsfy.gov.cn/xwzx2014/tpxw/2017/01/20092135572.html>.

<sup>17</sup> <http://sichuan.scol.com.cn/m/gqwx/201701/55795767.html?from=groupmessage&isappinstalled=0>.

Court rejected the appeal and affirmed the original decision. <sup>18</sup>

### **Beijing Intellectual Property Court Grants Zheng Minjie to Withdraw the Lawsuit against Five Defendants Including CNNIC**

The plaintiff Zheng Minjie sued China Internet Network Information Center, Beijing Guoxin Notary Office, Beijing Office of Tianjin Yitian Accounting Firms, Beijing Xinnet Digital Information Technology Co., Ltd. and Hangzhou Gougou Network Co., Ltd. for refusing to transaction, which was registered at Beijing Intellectual Property Court on 16 November 2015 and had been heard by collegial panel. During the process of hearing, plaintiff filed for withdrawing the lawsuit on 10 October 2016. The court granted the withdraw on October 20, 2016. <sup>19</sup>

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<sup>18</sup> <http://wenshu.court.gov.cn/content/content?DocID=73ae3065-a321-407c-b3da-7fc10425993f>.

<sup>19</sup> <http://wenshu.court.gov.cn/content/content?DocID=05343849-ba4a-40c5-9a0b-641ffed999e4>.

## Academia

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### **The Competition Policies and Law Annual Meeting (2016/2017) Held in University of International Business and Economics**

On January 12, 2017, the “Competition Policies and Law Annual Meeting (2016/2017) and the Release Ceremony of Report on Competition Law and Policy of China 2016” (“**Annual Meeting**”), hosted by Professional Committee of Competition Policy and Law under China Society for World Trade Organization Studies, were held in University of International Business and Economics. Officials from the three antitrust authorities, scholars from universities, in-house counsels and domestic and overseas lawyers participated in the Annual Meeting. In the Annual Meeting, the officials from the three authorities introduced the antitrust law enforcement situation in 2016 respectively. Hot issues, such as issues on administrative monopoly and competition review, unfair competition and monopoly in multiple industries, market regulation towards sharing economy and platform competition, amendment of the *Anti-Unfair Competition Law*, had also been discussed in the Annual Meeting.

## Dentons Team

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### **Jet Deng and Ken Dai Compose Annual Reviews of 2016 in Competition Law and Data Protection Area for China Law & Practice Journal**

Recently, Jet Deng and Ken Dai, Partners of Dentons Law Offices, were invited to compose annual reviews of 2016 in Competition & Antitrust area and Cybersecurity & Data Protection area for China Law & Practice Journal. The annual reviews of 2016 contained broadly introduction and deep analysis toward the development of laws, regulations and enforcement practice in relevant area. Based on above introduction and analysis, Jet Deng and Ken Dai proposed compliance suggestions for relevant enterprises within the reviews. Jet Deng and Ken Dai collectively composed two annual reviews in both Chinese and English. The first review, which was named Fighting for Fairness, discussed antitrust laws and regulations and enforcement trends in medical sector, automobile sector and public utilities area and shared major strategies in merger control and business negotiation. The second review, which was named Cybersecurity Compliance, introduced and analyzed the framework of data protection and supervision, the importance of the *Cybersecurity Law* and severe sanction system towards violators. Both reviews were composed in a Q&A model.

### **Dentons China Awarded the Competition Law Firm of the Year in China 2016 by GLE**

Recently, Dentons China was awarded as the Competition Law Firm of the Year in China 2016 by Global Law Experts (“GLE”), an UK’s famous guideline for lawyers. The award demonstrates Dentons China’s important position in global antitrust and competition law area. In 2016, Dentons China Antitrust Team, headed by Jet Deng and Ken Dai, participated a plenty of cases which had great social influence, including antitrust investigations in life science sector, mobile communication sector, international shipping sector and chemical sector and merger filing of famous undertakings in software development sector, optoelectronics sector, retailing sector and pharmacy sector. Meanwhile, Dentons China Antitrust Team offered antitrust compliance suggestions in terms of business arrangements for several multinational corporations.

WeChat Public Account

Name: Antitrust Practice Review (“反垄断实务评论”)

ID: Antitrust\_Review

This Public Account focus on updates of China’s antitrust law, including legislation, authorities, public enforcement, merger control, private litigation, academia, etc. Case study, theory introduction, practice guidance, original antitrust law reviews and articles are also contained. Welcome to join us.



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