

Update: Competition Policy & Enforcement in China

May 2015

Executive Summary

- China's competition regulators seem to have paused some controversial Antimonopoly Law (AML) enforcement practices in response to concerns raised in the US-China Business Council's (USCBC) September [competition report](#) and echoed by international government and industry stakeholders.
 - The National Development and Reform Commission (NDRC) completed only two new pricing investigations since that time, though both involved foreign companies. NDRC has recently announced new enforcement priorities, indicating plans to resume more high-profile investigations in areas such as abuse of intellectual property rights (IPR) in the near future.
 - The Ministry of Commerce (MOFCOM) approved 137 merger and acquisition (M&A) deals in the same time period with no rejections and no conditions imposed on approvals.
 - The State Administration of Industry and Commerce (SAIC) announced decisions in five investigations, all involving domestic companies.
- At the December 2014 Joint Commission on Commerce and Trade (JCCT), China committed to treat foreign and domestic companies equally in competition enforcement, increase transparency, and allow legal counsel to attend meetings and enforcement proceedings.
- A review of public NDRC price investigations reveals several interesting data points:
 - Chinese companies and foreign companies are both being fined on the basis of revenues in China. Initial concerns that foreign companies might be fined based on global sales so far are unfounded.
 - The average fine is 2.5 percent of sales, well below the cap of 10 percent allowed by the AML. However, foreign companies are being fined at a higher average rate (3.3 percent) than their domestic counterparts (1.9 percent).
- USCBC has also updated the data regarding foreign versus domestic cases:
 - Twenty-five percent of the NDRC's concluded pricing investigations have involved foreign companies, while approximately three-quarters have involved Chinese companies.
 - While 97 percent of M&A deals since 2008 have been approved by MOFCOM without conditions, all of the 26 rejected or conditionally approved transactions have involved foreign companies.
 - All of the 22 completed monopoly investigations by the SAIC have involved Chinese companies, but foreign companies are involved in two ongoing cases yet to be decided.
- Despite the pause, it remains to be seen if foreign company concerns have been sustainably resolved. These concerns primarily revolve around how investigations and M&A reviews are conducted and decided, including 1) fair treatment and nondiscrimination; 2) lack of due process and regulatory transparency; 3) lengthy time periods for merger reviews; 4) the role of non-competitive factors in competition enforcement; 5) determination of fines and remedies; and 6) the broad definition of monopoly agreements. Addressing these concerns would also benefit domestic Chinese companies.
- Broad questions raised six months ago have not yet been put to rest: Will China use the AML to protect domestic industry rather than promote fair competition? Is the government using the AML to lower prices, rather than letting the "market play the decisive role" as prioritized at the Third Plenum? Decisions and investigations in the coming months may provide further insight.
- As the second largest economy in the world, China should and needs to have a well-designed and predictably executed antitrust regime. Government and industry groups in the United States and other countries must work with their counterparts in China to promote further progress toward reaching this mutually beneficial goal.

Competition issues have been prominently featured in discussions about China's business landscape for the last several years, given the growing number of high-profile competition cases involving foreign and domestic companies. In 2008, China [launched the Antimonopoly Law](#) (AML), the country's first comprehensive competition law, and has taken notable steps to build the knowledge base, government infrastructure, and regulatory capacity needed to enforce it.

The AML created a unique regulatory structure that divided competition enforcement among three antimonopoly enforcement authorities (AMEAs): the Ministry of Commerce (MOFCOM) for reviews of mergers and acquisitions (M&A), the National Development and Reform Commission (NDRC) for price-related monopoly investigations, and the State Administration of Industry and Commerce (SAIC) for non-price-related monopoly cases. With the framework in place, these agencies began creating the processes China's new competition regime would use in practice, releasing a flurry of follow-up regulations designed to guide antimonopoly enforcement. Each AMEA has also boosted enforcement personnel and capacity, permitting greater competition enforcement activity.

China's AML enforcement activity has garnered attention from stakeholders around the world, including governments, companies with operations in China, and media outlets. Many stakeholders question whether foreign companies are being treated fairly and equally in these investigations in line with their Chinese counterparts. Such concern has partly been fueled by extensive media reporting on investigations of foreign companies – not only in the West, but also in China, where media outlets continue to cover foreign-related investigations much more extensively than those of domestic companies. Specific questions focus on how AMEAs launch competition investigations, how they conduct those investigations, how they determine fines or remedies – and lastly – whether foreign companies and domestic companies are treated equally in each of these steps.

As this issue has gained attention, the US-China Business Council (USCBC) and other foreign stakeholders have regularly raised these issues directly with Chinese government officials at all levels. At the July 2014 Strategic & Economic Dialogue (S&ED), the US and Chinese governments affirmed that “the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries, and that enforcement of their respective competition laws should be fair, objective, transparent, and non-discriminatory.” Such language marked a step in the right direction, but did not address many of the specific concerns raised by USCBC and other groups.

To advance the agenda on these issues, in September 2014 USCBC published a [comprehensive report](#) on China's competition regime, including a detailed analysis of China's competition enforcement activity, a summary of the questions and concerns of foreign companies, and specific recommendations for how to further improve the substance, implementation, and perception of China's competition regime. While the efforts of USCBC and other stakeholders have elevated this issue on the US-China commercial agenda and have led to some progress, many key questions remain unanswered.

This report provides an update on US company views and perspectives on China's competition regime based on developments that have occurred in the eight months since USCBC's initial report.

New Developments in Competition Enforcement (September 2014-April 2015)

Since September 2014, there have been notable developments on China's competition enforcement, including progress made in bilateral discussions, changes to relevant laws and regulations, and changes in the enforcement landscape – including new investigations of both foreign and domestic companies.

Western and Chinese media reporting on China's competition regime have featured monopoly investigations targeting foreign companies and their resulting fines. A review of publically available information provides fuller detail on competition enforcement in China.

- Foreign companies only constitute about twenty-five percent of the completed NDRC monopoly pricing investigations since 2008, (Appendix 2) none of the companies involved in completed SAIC

investigations(Appendix 3).¹ Chinese companies have been investigated in sectors such as pharmaceuticals, financial services, Chinese liquor, cement, and insurance. Notable foreign company investigations have occurred in the pharmaceutical, infant milk powder, automotive, and high-tech sectors.

- The AML has unclear provisions about the basis of fines for competition violations, but public information on completed cases indicates that fines imposed on foreign and domestic companies are being assessed on the same basis: sales in the China market, not global sales. Every case decision claiming an AML violation by a foreign company either explicitly states that fines are based on sales in China, or implies it based on the fine amount. Some decisions further clarify that the basis for the fine is sales from the “relevant market” in China, though they do not always define relevant market. It is not clear whether this standard is upheld in all AML investigations, but there is no clear evidence that it is inconsistent among investigations of foreign versus domestic companies.
- While the basis for the calculations may be the same, foreign companies are more likely to be fined at higher percentages than their domestic counterparts. The AML permits NDRC to assess fines of up to 10 percent depending on the details of the case, but does not provide any specific guidance for determining the appropriate percentage, leaving NDRC with considerable discretion. In reviewing publically available case decisions for AML investigations conducted by NDRC, the average fine is 2.5 percent of sales, well below the upper limit of 10 percent allowed by the AML. However, foreign companies were fined an average rate of 3.3 percent, while Chinese companies were fined at a rate of 1.9 percent. When coupled with the sizable sales figures of many multinational corporations in China, this disparity in percentage can lead to a significant difference in the overall fine.
- While the majority of M&A transactions are approved without conditions, all of the 26 transactions that were rejected or approved with conditions have involved foreign companies. Overall, the Ministry of Commerce (MOFCOM) has reviewed more than 1,000 M&A transactions since 2008, approving more than 97 percent without conditions. While most M&A approvals since 2008 have involved domestic companies, a number of transactions involving foreign companies have also been approved, including transactions involving foreign companies such as Abbott, Cummins, Siemens, Dow, and Toyota.

Domestic Developments

Although the bulk of China’s competition legal framework is now in place, work continues on a number of key laws and regulations. The most notable regulatory development during this time period was the release of SAIC’s final [Provisions to Prohibit Intellectual Property Abuse to Eliminate or Restrict Competition](#) in April 2015. These regulations, which had been in the drafting process since 2009, cover the relationship between intellectual property and competition, addressing issues such as essential facilities, patent disclosure in standard-setting processes, and intellectual property (IP) related trading practices like bundling and tying. USCBC and other industry groups had concerns with various provisions within the law, and provided written [comments](#) on many of the areas listed above.

Other competition and monopoly-related laws and regulations active during this period include:

- Draft Template for Intellectual Property Policies in Industry Standardization Organizations.² This draft template, issued for comment by the Ministry of Industry and Information Technology’s

¹ Foreign companies are involved in ongoing monopoly investigations from both NDRC and SAIC. It is challenging to compile a complete list of companies that have been investigated by NDRC and SAIC for a number of reasons. First, it is not clear that all of NDRC’s investigations are made public. Additionally, foreign and domestic media coverage of investigations, which generally name foreign firms but sometimes exclude domestic firms, are uneven, making it difficult to fully evaluate whether the investigation of domestic companies is administered in proportion to their activity in sensitive industries.

² The draft template is no longer available via the Electronic Intellectual Property Center site, but can be found at the [China IPR blog](#).

Electronic Intellectual Property Center in November 2014, includes a number of provisions that relate to antitrust and licensing concerns, including provisions dealing with essential patents, patent disclosure to standard-setting groups, and requirements for licensing of standard-essential patents.

- [Measures Concerning the Divestiture of Assets or Businesses when Implementing Concentrations of Business Operators](#). These rules, released by MOFCOM in December 2014 to replace earlier interim regulations, provide guidance on how MOFCOM oversees the implementation of remedies imposed in merger and acquisition transactions, including a variety of structural and behavioral remedies such as divestitures, “hold separate” provisions, and other business conditions.
- [Draft Interpretation on Issues Related to the Application of Laws in Reviewing Act Preservation Cases of Disputes over Intellectual Property Rights and Competition](#). This draft interpretation, released for public comment by the Supreme People’s Court in February 2015, describes the process by which parties can apply for judicial orders requiring another party to act—or not act—in a certain way, such as a preliminary injunction or evidence preservation order.

On the enforcement side, NDRC saw a significant – but perhaps temporary – slowdown in pricing investigations, while MOFCOM and SAIC have continued a steady pace of M&A reviews and monopoly investigations.

- **MOFCOM** continued to review a steadily increasing number of M&A transactions, reviewing 75 deals in the fourth quarter of 2014 and an additional 62 in the first quarter of 2015. All of the deals reviewed by MOFCOM during this time period were approved without conditions. While MOFCOM did not apply new conditions to any M&A deals, it [approved](#) an application from Google to remove one of the specific restrictions that had been imposed in 2012 when Google purchased Motorola Mobility (Google would treat all original equipment manufacturers in a non-discriminatory manner with respect to the provision of its Android platform). That application and decision were prompted by Google’s sale of Motorola Mobility and its smartphone business to Lenovo, which closed on October 30, 2014.

In total, MOFCOM has reviewed 1,058 deals since the AML went into effect in August 2008, and has approved all but 26 of those deals. However, all of those deals that were rejected or approved with conditions involved foreign parties, many involving foreign-foreign global acquisitions in which the reviewed companies had subsidiaries in China.

MOFCOM’s simplified case procedures (initially implemented in April 2014) have been increasingly relied upon since their introduction. Since the first of these simplified cases was posted for public comment on May 22, 2014 through the end of 2014, 103 deals have been approved through this process – nearly half of all deals. In the first quarter of 2015 alone, 36 of the 62 deals that were approved without conditions came through the simplified process – nearly 60 percent of that total.

- **NDRC** has seen a notable slowdown in enforcement activity. After announcing investigations involving both foreign automotive and domestic cement and insurance companies in September 2014, NDRC and its provincial branches have announced a final decision in only two cases:
 - In February 2015, NDRC determined Qualcomm was in violation of the AML, fining the company RMB 6.088 billion (\$971.7 million³), or eight percent of Qualcomm’s sales revenue in China in 2013. NDRC’s decision stated that Qualcomm holds a dominant market position in several key telecom standard-essential patents and in chips, and had abused that position by charging excessive royalty rates, tying wireless and non-wireless patents, and attaching conditions to chip sales.
 - In April 2015, the Jiangsu Price Bureau ruled that Mercedes-Benz dealers in Nanjing, Wuxi, and Suzhou violated the AML, fining Mercedes-Benz RMB 350 million (\$56.4 million), or one

³ Conversion rates for this and other RMB figures are done based on the RMB/dollar exchange rate on the last day of the month in which the decision was announced. For example, this conversion is done based on the exchange rate on February 28, 2015.

percent of the company's sales revenue of the previous year. The bureau also fined the dealers a total of RMB 7.86 million (\$1.27 million). In its ruling, the bureau said that Mercedes-Benz and its dealers had reached monopoly agreements by enforcing minimum prices for final products and fixed prices for components.

However, recent developments signal that NDRC may resume its more robust level of competition enforcement activity. In March 2015, Zhang Handong, the new head of NDRC's Price Supervision and Antimonopoly Bureau, stated at a Chinese Academy of Social Sciences (CASS) symposium in Beijing that abuse of intellectual property rights (IPR) will be the next major focus of AML enforcement in China. He also noted that NDRC and other agencies would focus investigations on specific industries such as the pharmaceutical, automotive, and agricultural machinery industries. Zhang said that his bureau would seek to boost AML enforcement by targeting monopoly agreements, abuse of dominant market position, abuse of administrative power to eliminate or restrict competition, and other types of monopolies.

- **SAIC** continued a slow but steady stream of decisions involving monopoly behavior, announcing five new decisions since September 2014 that involved companies in the mining, tobacco, natural gas, concrete, and water industries. As with all of SAIC's previously announced decisions, these involved domestic companies and focused on monopoly agreements and abuse of market dominant position. SAIC has yet to announce a final decision in either of the two ongoing SAIC investigations involving foreign companies, Microsoft and TetraPak.
- In **private litigation**, the most significant recent development was the Supreme People's Court's October 2014 [final decision](#) in the ongoing legal battle between Chinese companies Qihoo 360 and Tencent, upholding the decisions of lower courts that ruled in favor of Tencent. The case had centered on whether Tencent's decision to incorporate its antivirus software (QQ Doctor) into its popular QQ instant messaging program could be considered antimonopoly behavior. Qihoo's initial suit against Tencent in the Guangdong Higher People's Court was unsuccessful, leading it to appeal to the Supreme People's Court.

Bilateral Developments

Due to the high visibility of competition issues among US and Chinese stakeholders, the two governments have spent considerable time and effort discussing these issues over the past several months. Just prior to USCBC's previous report, the US and Chinese governments included competition issues among the outcomes of the July 2014 S&ED. At that dialogue, the two sides affirmed that "the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries, and that enforcement of their respective competition laws should be fair, objective, transparent, and non-discriminatory."

As attention grew, Chinese officials responded. Premier Li Keqiang addressed foreign company concerns related to discriminatory investigations at the September 2014 Davos Forum in Tianjin, saying that he shared their concerns. Later that month, Vice Premier Wang Yang also raised these issues with USCBC at the 18th China International Fair for Investment & Trade.

At the December 2014 JCCT, China reiterated its S&ED commitments, stating further that all companies should be treated equally in AML enforcement. Additionally, China stated that enforcement measures would be carried out to address competition concerns and not to protect domestic companies or industries. AMEAs would also improve transparency of enforcement proceedings, strictly follow statutory limits on their authority, and allow legal counsel to attend meetings and enforcement proceedings.

Top Challenges and Policy Recommendations

Despite the increased level of attention and bilateral engagement on competition issues, key strategic questions remain about the direction and objectives of China's competition regime. These questions include:

- Will China use the AML to protect domestic industry rather than promote fair competition?
- Is the government using the AML to force lower prices rather than letting the "market play the decisive role" as enshrined at the third plenum?
- What approach will China ultimately adopt for its economy and its antitrust regime – a government-dictated, state-run model, or a market- and consumer-oriented model?

In addition to these broad questions, foreign stakeholders continue to raise questions about issues such as fair treatment and non-discrimination, due process and regulatory transparency, the role of non-competitive factors in competition enforcement, and determination of remedies and fines. As noted above, the two sides have made some progress in discussions, particularly on non-discrimination and due process issues. US companies will be watching Chinese enforcement actions very closely in the coming months to see if bilateral commitments made at the S&ED and JCCT are fully and consistently implemented, and if China takes steps to address additional areas of concern.

USCBC's [September 2014 competition enforcement report](#) includes a series of recommendations that address these issues in greater detail.

Fair Treatment/Nondiscrimination

Chinese authorities regularly state that AML enforcement activities do not target foreign companies. Chinese regulators committed at both the 2014 S&ED and JCCT that they would treat foreign and domestic companies equally and that competition would be "fair, objective, transparent, and non-discriminatory." Such language is a positive step, but aspects of China's regulatory framework for competition – and previous enforcement outcomes – fuel continued concern about the ability to translate those words into practice. Such concerns include:

- Criteria in MOFCOM merger reviews that allow officials to weigh non-competition factors, including those related to industrial policy;
- Required MOFCOM consultations with industry regulators such as NDRC, the Ministry of Industry and Information Technology, or the Ministry of Agriculture that provide government regulators and domestic interests the ability to influence decisions based on protectionist or industrial policy goals;
- Security reviews for the foreign acquisition of domestic companies (detailed in Article 31 of the AML) that could be used to promote domestic economic protectionism;
- Considerable leeway for NDRC and SAIC to select investigation targets and carry out investigations, with little transparency about how those targets are selected, and evidence from high-profile cases that decisions may be influenced by broader Chinese policy concerns on intellectual property, standards, and the protection of domestic industries, as opposed to the interests of fair competition; and
- Competition investigations that do not fully value market considerations, or that make inappropriate comparisons between prices in China and overseas markets without taking into account local market conditions.

Due Process and Transparency

Transparency has been a major topic of bilateral discussion in the last several months. China has made specific commitments to provide clear information to parties involved in competition investigations about authorities' concerns, notify parties of the facts and basis for any administrative penalties, and publish final decisions with detailed rationale. Additionally, China made a specific commitment that its AMEAs would allow both internal and external legal counsel to attend meetings with their clients. Both developments are greatly welcomed by US companies seeking due process and transparency in investigations, and should be implemented robustly.

While these commitments should address some of the issues raised by USCBC member companies, they will only be effective if they are implemented fully and fairly by officials at all levels. Specific ongoing issues include the inability during enforcement proceedings to inquire about the nature of complaints, pressure to "admit guilt" without the ability to respond to evidence, the inability to have legal counsel present during

competition investigations and enforcement proceedings, and the lack of transparency in publishing case decisions. Companies will continue to raise these issues until stakeholders see a clear track record that enforcement agencies have updated their work practices to reflect China's commitments.

Time Periods for M&A Reviews

While long and uncertain timeframes across the range of competition investigations create challenges for companies, these challenges have been most acute for merger reviews. Articles 25 and 26 of the AML describe a specific timeline for M&A review processes: a preliminary review that lasts up to 30 days, a more detailed review that lasts up to 90 days, and an extension period if the review is not completed that can last up to 60 days. Clear timelines for reviews were established to provide important guidance to potential filers, helping them make preparations preceding transactions.

In practice, timelines remain increasingly stretched as the number of transactions that MOFCOM reviews grows, and more parties whose reviews approach the 180-day limit have been asked to withdraw and refile the transaction. MOFCOM's pre-consultation process also remains an issue, as some companies report that they are encouraged to use the pre-consultation process even as increasing MOFCOM workloads have increased the length of the process. Notably, time spent in the pre-consultation process does not appear in official case timelines, as the official 180-day review timeline does not officially begin until MOFCOM accepts the company's application and supporting materials.

More companies are using MOFCOM's simplified case review system, which should allow regulators to devote more resources to addressing complex cases on more rapid timelines. However, there has been little evidence of this outcome to date, as MOFCOM has not rejected or imposed conditions on any deals since the simplified case review began to pick up steam in late 2014 that could shed light on whether the existence of this channel could allow shorter timelines in complex merger review cases.

MOFCOM has also not addressed other structural issues that can delay M&A review timelines, such as required MOFCOM consultation with other government agencies that can result in new concerns being presented to filers late in the process.

Role of Non-Competitive Factors in Competition Enforcement

Two key articles of the AML (Article 4 and Article 27) grant competition agencies the ability to weigh both competitive factors and non-competitive factors in the law's enforcement, and specifically define those factors to include areas such as influence on national economic development, influence on technological progress, and influence on consumers and other business operators. Competition review processes allow specific times for government stakeholders to consider such non-competition concerns. For example, MOFCOM is required to consult with other agencies during the merger review process, allowing government regulators and domestic interests to influence decisions based on protectionist or industrial policy goals, rather than on truly competitive factors.

Key competition regulations (such as the SAIC's [Provisions to Prohibit Intellectual Property Abuse to Eliminate or Restrict Competition](#)) and various AML decisions have also raised concerns about how regulators consider non-competitive factors. Some competition decisions, for example, illustrate that regulators are weighing competition concerns alongside Chinese policy goals such as domestic innovation and industry development. This focus undermines the balance struck in other regulations between China's goal of encouraging the adoption of innovative standards and the need to preserve the free exercise of intellectual property by patent owners. Recent decisions indicate that such non-competitive factors remain an important and concerning part of competition enforcement decisions.

Application of Remedies and Fines

As Chinese AMEAs have gained experience and set best practices for competition enforcement, they have laid out increasingly clear markers for how they will apply remedies to address competition concerns. MOFCOM continues to apply a unique mix of structural and behavioral remedies to address potential competition concerns. The implementation of its updated [Measures Concerning the Divestiture of Assets or Businesses](#)

[when Implementing Concentrations of Business Operators](#) provide further legal grounding to apply remedies such as divestitures and “hold separate” provisions that require companies to maintain separate subsidiaries in China as market competitors. Notably, MOFCOM favors a heavier use of behavioral remedies, including regular application of behavioral remedies even in cases where the monopoly concerns raised have been horizontal. Some of these behavioral remedies restrict or eliminate the legitimate business value of conducting the transaction in the first place.

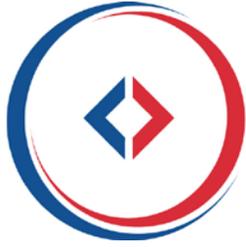
NDRC and SAIC continue to work within the framework of the AML’s Article 47 to apply fines of up to 10 percent of the previous year’s sales revenue. Significant questions remain, however, as to how these fines are determined and applied, particularly with the lack of specific guidance or standards for when an agency might apply a higher fine versus a lower fine. As noted above, all of the fines levied on foreign companies to date have been limited to domestic sales revenue. Without explicit language to clarify the basis for fines, however, questions remain about whether future fines could be assessed based on global company revenue. In addition, basing fines on a percentage of sales serves to discriminate against large companies while limiting flexibility in setting fines based on the level of the infraction. Additionally, questions remain about whether fines are being applied fairly to both foreign and domestic companies. To date, foreign companies penalized by NDRC under have received higher fines (3.3 percent) than their domestic counterparts (1.9 percent).

Broad Definition of Monopoly and Pricing Agreements

US companies have a number of lingering questions about provisions within the AML that define monopolistic behavior, and little has changed over the past few months to address these questions. Many of their concerns relate to the ways that China’s competition regime differs from international best practices. Companies also highlight provisions that are designed to protect against anticompetitive practice, but in practice produce unintended negative consequences for foreign and domestic companies operating in China.

Such issues include a range of business agreements, such as resale price maintenance (RPM) agreements and “other monopoly agreements” as determined by NDRC or SAIC. Such clauses – which appear to eliminate RPM agreements in blanket fashion – are out of sync with evolving practices in other legal jurisdictions, which have generally shifted to an approach considering a given RPM by looking at its pro- and anti-competitive effects (the “rule of reason”). Chinese case law on these issues remains unclear, with some indications that RPMs have been considered based on their competitive impact alongside final decisions that have ruled these to be anticompetitive.

Companies also fear that other agreements they sign with distributors could be construed as monopolistic. For example, many companies selling complex products such as automobiles frequently sign agreements with their manufacturing partners to ensure that the product-specific parts those partners manufacture are only sold through company-authorized dealers. These agreements are designed to promote strong customer service and customer safety by ensuring that only trained, certified personnel conduct repairs of such products using spare parts. NDRC’s announced focus in 2015 on monopoly agreements raises concerns that these and other agreements could be targeted in coming months without consideration of their pro-consumer effects.



Appendix 1: Merger Reviews Completed by MOFCOM (2008 – present)

Since the initial implementation of the AML in 2008, MOFCOM has increased enforcement capacity and laid down clear markers that global transactions – even those between foreign companies that have little business in China – must be reviewed in China. This has resulted in a sharp increase in the number of merger review cases handled by MOFCOM.

According to statistics through the first quarter of 2015, MOFCOM has conducted full reviews of 1,058 proposed merger transactions, with the number increasing steadily year-on-year. More than 97 percent of these cases (1,032) that have been reviewed were approved by MOFCOM unconditionally. While most M&A approvals have involved domestic companies, a number of transactions involving foreign companies have also been approved, including transactions involving foreign companies such as Abbott, Cummins, Dow, and Toyota. Of the remaining 26 cases, all involve foreign companies. Twenty-four of these were approved with conditions, and two were rejected.

The table on the next page includes information and descriptions for each case that MOFCOM has either approved conditionally or rejected since the launch of the Antimonopoly Law in August 2008, including the 26 cases mentioned above.

Merger Reviews Completed by MOFCOM, 2008-2015 Q1

	Approved		Rejected	Total Reviewed
	Unconditionally	Conditionally		
2008	16	1	0	17
2009	72	4	1	77
2010	113	1	0	114
2011	164	4	0	168
2012	158	6	0	164
2013	211	4	0	215
2014	236	4	1	241
2015 Q1	62	0	0	62
TOTAL	1,032	24	2	1,058

Sources: Fei Deng, “Merger Review and Private Litigation under China’s Anti-Monopoly Law,” US-China Business Council Annual Meeting, June 2, 2014; Ministry of Commerce Antimonopoly Bureau Quarterly Reports.

Mergers and Acquisitions Rejected or Conditionally Approved by MOFCOM

Date Announced	Industry	Parties	Remedy	Case Duration
November 2008	Beverage Manufacturing	InBev, Anheuser-Busch	Conditionally approved : Pre-merger, Anheuser-Busch had a 27 percent stake in Tsingtao Brewery (the second-largest beer producer in China) and InBev had a 29 percent stake in Zhujiang Brewery (fourth-largest). MOFCOM imposed three conditions on the post-merger entity: InBev and AB should not increase their stakes in Zhujiang Brewery and Tsingtao Brewery from pre-merger levels; InBev may not acquire any stakes in China Resources Snow Breweries or Beijing Yanjing Brewery (largest and third-largest, respectively); and InBev will be obliged to notify MOFCOM of any changes in its controlling shareholders.	70 days
March 2009	Beverage Manufacturing	Coca-Cola, Huiyuan	Rejected : MOFCOM asserted that the proposed acquisition would enable Coca-Cola to leverage its dominant position in the carbonated soft drinks to dominate the neighboring juice market. Such dominance would raise entry barriers and limit the ability of medium and small-sized juice companies to compete and innovate. MOFCOM stated that since the two parties were not able to agree on an acceptable remedy with MOFCOM, they had to reject the transaction.	182 days
April 2009	Chemical Manufacturing	Mitsubishi Rayon, Lucite	Conditionally approved : This case raised competition concerns in the methylmethacrylate (“MMA”) market, where the parties would have a post-merger market share of 64 percent. According to MOFCOM, Mitsubishi had businesses in both the MMA market and downstream markets, and thus would have been able to foreclose downstream competitors by leveraging its dominant position in the MMA market. MOFCOM required the parties to divest assets, with Lucite to divest 50 percent of its annual MMA production capacity for five years to one or more unaffiliated third party purchasers. Lucite China must also grant third-party purchasers the right to purchase 50 percent of Lucite China's annual MMA production for five years at cost (equal to the production and management cost per unit), with no added profit margin, with compliance verified annually by an independent auditor.	124 days

September 2009	Auto Manufacturing / Equipment Manufacturing	General Motors, Delphi	Conditionally approved : MOFCOM argued that GM would have the ability to bar its competitors in the auto manufacturing market as Delphi was the exclusive supplier for various Chinese auto manufacturers. MOFCOM cleared the transaction subject to conditions: GM/Delphi must continue to supply Chinese auto manufacturers on a non-discriminatory basis; GM and Delphi would not exchange confidential information relating to any third party; GM/Delphi must cooperate with customers to achieve a smooth transition when they switch to other auto parts suppliers; and GM must continue its diversified and non-discriminatory policy of purchasing auto parts from multiple suppliers.	42 days
September 2009	Pharmaceuticals	Pfizer, Wyeth	Conditionally approved : MOFCOM believed the acquisition would have anti-competitive effects on the swine mycoplasma pneumonia vaccine (SMPV) market in China. The agency argued that the combined entity would possess a 49 percent market share in an increasingly concentrated SMPV market in China. According to MOFCOM, this would have enabled Pfizer/Wyeth to enlarge their market share and consequently increase the price of SMPV and raise entry barriers to the SMPV market. MOFCOM ordered a divestiture of Pfizer's SMPV business in China. Pfizer had to find a third party buyer approved by MOFCOM within six months and ensure that the divested business included all tangible and intangible assets necessary for the survival and competitiveness of the divested business.	113 days
October 2009	Battery Manufacturing	Panasonic, Sanyo	Conditionally approved : MOFCOM argued that the acquisition would have anti-competitive effects in three highly concentrated battery markets: rechargeable button-shaped lithium batteries, nickel-hydrate batteries for daily use, and nickel-hydrate batteries for automobile use. Post-transaction, Panasonic/Sanyo would have market shares of 62, 46, and 77 percent, respectively. MOFCOM considered that the high market shares in already concentrated markets would easily enable the parties to raise prices. Both parties were ordered to divest substantial businesses in all three merger-relevant markets. Sanyo and Panasonic were to spin off their relevant businesses within six months to an independent third party approved by MOFCOM.	283 days
August 2010	Healthcare	Novartis, Alcon	Conditionally approved : MOFCOM believed that post-transaction Novartis/Alcon would be able to coordinate with Hydron (a key supplier of contact lens care products) on price, quantity, and sales territories. Therefore, the transaction was cleared on conditions that Novartis cease sales of its ophthalmic anti-inflammatory/anti-infective combinations under its current brands in China, and not sell any of these products under the same or different brands in China for the next five years. Furthermore, Novartis would terminate its distribution agreement with Hydron within 12 months.	116 days

June 2011	Chemicals / Fertilizer	Uralkali, Silvinit	<u>Conditionally approved</u> : The potassium chloride market was highly concentrated with the top three producing countries accounting for more than 80 percent of the world's total reserves. MOFCOM believed that, since China relies heavily on imports of these products, 50 percent of which are from Uralkali, Silvinit, or their affiliated companies, the transaction would increase the level of concentration in the market. In addition, the merged entity would benefit from an increased market power through the ownership of more potassium resources and stronger production capabilities. Thus, MOFCOM imposed acquisition conditions to maintain a stable level of imports of potassium chloride into China. The merged entity would have to continue to provide the whole range of potassium chloride products to the Chinese market in sufficient quantity and maintain the current methods, processes, and existing customary negotiations procedures.	81 days
October 2011	Textile Machine Manufacturing / Private Equity	Alpha V, Savio	<u>Conditionally approved</u> : Uster (28 percent owned by private equity investor Alpha V) and Leopfe (a wholly-owned subsidiary of Savio) were the only two global suppliers of yarn clearers – devices to remove faults from yarn and improve its quality – remove faults (thick places, thin places, foreign matter) from the yarn. MOFCOM believed that after the transaction it is likely that Uster and Leopfe could coordinate with each other through Alpha V to restrict and/or eliminate the competition in the yarn clearer market. MOFCOM imposed several conditions on the acquisition, including requiring Alpha V to divest its shares in Uster to an independent party within six months upon MOFCOM's approval of the transaction and prohibiting Alpha V from participating in or influencing Uster's operations and management before completion of the divestiture process.	110 days
November 2011	Energy	General Electric, Shenhua (formation of a JV)	<u>Conditionally approved</u> : GE China and China Shenhua Coal to Liquid and Chemical Co., Ltd. (CSCLC, a subsidiary of state-owned Shenhua Group) had announced plans to establish a 50/50 joint venture (JV) to license coal-water slurry (CWS) gasification technology to industrial and power projects in China. GE Infrastructure Technology, another subsidiary of GE, would license GE's CWS gasification technology to the proposed JV. MOFCOM found that this transaction might exclude or restrict competition in the CWS gasification technology licensing market. The JV was approved, subject to the condition that it may not force potential licensees for CWS gasification technologies to use its technology. Further, it may not raise these licensees' cost of using other technologies by restricting feedstock supply.	212 days

December 2011	Computing Components	Seagate, Samsung	Conditionally approved : MOFCOM raised concerns regarding market share in the hard disk drive (HDD) manufacturing industry, with Seagate and Samsung representing two of the top five companies that collectively hold a virtual monopoly in the market. MOFCOM believed that reducing the number of competitors would encourage collusion. The acquisition was approved, but required that Samsung HDD remain an independent competitor to Seagate and others. Seagate was also required to ensure that an unaffiliated Chinese supplier would not be restricted from supplying other HDD manufacturers.	208 days
February 2012	Chemical Manufacturing	Henkel Hong Kong, Tiande (formation of a JV)	Conditionally approved : MOFCOM's review of the proposed joint venture focused on three chemical products that appear in correlated upstream and downstream roles in compound production. MOFCOM's fear that a JV between these parties that supply each other with inputs for different chemical compound outputs would eventually lead to them stifling competition by restricting competitor access to product inputs. MOFCOM required Tiande to provide one of the concerned chemicals to all downstream customers on a "fair, reasonable and non-discriminatory" basis. Tiande was also prohibited from selling this chemical at an unreasonably high price, offer more favorable terms of supply to the JV, or exchange competitive information with Henkel or the JV.	186 days
March 2012	Electronics Components	Western Digital, Hitachi	Conditionally approved : Western Digital and Hitachi were among the world's five largest manufacturers of data storage drives at the time. MOFCOM was concerned that because China has the world's greatest number of consumers who buy computers, they would potentially suffer most widely from increased HDD prices. China is also home to large numbers of manufacturers which incorporate HDDs in their computer products. MOFCOM approved the acquisition but imposed conditions requiring Hitachi GST to remain as an independent competitor in the global HDD market, with independent manufacturing, pricing, and marketing. Western Digital and Hitachi were also prevented from substantially altering their business models or coercing customers into exclusively purchasing their HDDs.	336 days

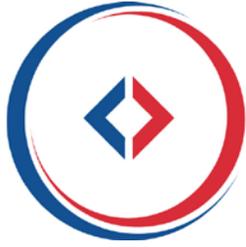
May 2012	Mobile Phone Manufacturing	Google, Motorola Mobility	Conditionally approved : MOFCOM was concerned with the dominant market share in China of Google's mobile operating system, Android. It believed Google could provide preferential licensing conditions to Motorola to use Android on Motorola devices, giving it an advantage over other mobile phone manufacturers. MOFCOM also stated that Google's acquisition of Motorola's patent portfolio would allow it to impose unreasonable licensing conditions of such patents to competitors. MOFCOM's remedy required Google to license Android free of charge and to treat all mobile device OEMs equally. ⁴	233 days
June 2012	Aviation Electronic Systems	UTC, Goodrich	Conditionally approved : UTC and Goodrich comprised 84 percent of the market share in aircraft electronic systems, a market that MOFCOM stated had high entry barriers due to research costs. MOFCOM approved the acquisition but required the companies divest Goodrich's electronics systems business, and find a suitable buyer for this business divestiture within six months.	187 days
August 2012	E-Commerce	Walmart, Yihaodian	Conditionally approved : MOFCOM argued that Walmart's rich experience in operating physical markets for goods and grocery shopping could allow it to expand and eliminate competition in the online e-commerce goods and groceries shopping space. MOFCOM limited Walmart's acquisition to Yihaodian's online direct sales business, and prohibited the company from providing online trading services to other trading parties without first obtaining a value-added telecom services permit. Walmart was also prohibited from operating Yihaodian's current online trading platform service.	242 days
December 2012	Application Processors / Intellectual Property	ARM, G&D, Gemalto (formation of a JV)	Conditionally approved : Key concerns raised by MOFCOM about this joint venture focused on licensing of intellectual property related to application processors to offer a trusted execution environment (TEE) – a secure area in application processors used in electronics. MOFCOM argued that ARM's globally dominant position in IP licensing and role in establishing TEE created risk that the JV would restrict other companies from providing TEEs by limiting IP licensing. MOFCOM ruled that ARM disclose the security monitoring code and other information that is necessary to develop alternative TEE solutions based on its application processor technology.	217 days

⁴ On January 29, 2014, Lenovo and Google [announced an agreement](#) under which Lenovo would purchase the Motorola Mobility smartphone business from Google. The deal [closed](#) on October 30, 2014, prompting Google to apply to MOFCOM to eliminate some of the conditions imposed under the original transaction – namely, that Google will treat all original equipment manufacturers in a non-discriminatory manner with respect to the provision of its Android platform. On January 9, 2015, MOFCOM [approved](#) Google's application and removed that requirement.

April 2013	Natural Resources/ Mining	Glencore, Xstrata	<u>Conditionally approved</u> : MOFCOM was concerned with competition in the minerals market, largely due to China's heavy reliance on imports of copper, lead, and zinc. Specifically, the agency was concerned that the post-merger market shares of Glencore and Xstrata for these three minerals would harm competition, with downstream Chinese users of Glencore's inputs likely affected negatively. MOFCOM required the combined entity to divest and sell a copper mine in Peru within 18 months of the decision. Additionally, Glencore was required to provide lead and zinc concentrate to Chinese customers for eight years after the decision.	381 days
April 2013	Agricultural Products	Marubeni, Gavilon	<u>Conditionally approved</u> : MOFCOM argued that Marubeni's sales infrastructure in China and share of the soybean import market in China, combined with Gavilon's US soybean sourcing operations, would limit competition in the soybean import market. MOFCOM approved the acquisition with conditions on the deal: establishing two independent subsidiaries as relating to soya bean exports and sales to China; maintaining two separate operating teams with independent operations; prohibiting the exchange of competitive information between the two subsidiaries, backed up by a mandatory firewall; and prohibiting the Marubeni subsidiary's purchase of soya beans from the Gavilon subsidiary, except on an arm's length basis.	308 days
August 2013	Medical Devices	Baxter, Gambro	<u>Conditionally approved</u> : Baxter and Gambro were both major competitors in the highly concentrated CRPT device market (equipment used for treatment of kidney issues). MOFCOM concluded that Baxter would have a dominant market position for CRPT products after the merger, since the transaction would eliminate one of Baxter's main competitors and thus negatively impact competition. The transaction was approved, but with conditions that Baxter divest its worldwide CRPT business and discontinue its OEM agreement with competitor Niplo in the Chinese market.	221 days

August 2013	Electronic Components	Mediatek, MStar	<u>Conditionally approved</u> : MOFCOM found that Mediatek and MStar were primary competitors in the LCD TV control chip market, which they stated was a market with high technical barriers to entry. MOFCOM argued that the post-acquisition environment would eliminate the benefits the competitive relationship brought to the market, as the combined company would have a market share as high as 61 percent in the global market and 80 percent in China. MOFCOM also alleged that other LCD TV control chip manufacturers would not be able to compete effectively with the combined entity, meaning that downstream TV makers in China would have restricted choices in the procurement of LCD TV control chips. MOFCOM's approval required MStar's Taiwanese subsidiary to take ownership of MStar's LCD TV control chip business, and continue operating as a competitor in the Chinese market.	417 days
January 2014	Biotechnology	Thermo Fisher, Life Technologies	<u>Conditionally approved</u> : MOFCOM found considerable overlap in the two companies' businesses in three biotechnology areas, with 59 relevant products between them. MOFCOM's analysis led it to focus on a portion of those products that would have high market concentration and estimated price increases in a post-acquisition environment. The final approval of the acquisition set conditions that Thermo Fisher divest its global cell culture business, sell its 51 percent stake in a Chinese bioengineering subsidiary, and reduce prices of certain products that had potential for significant price increases due to market concentration after the acquisition. (Those prices should be reduced by one percent per year for 10 years.)	196 days
April 2014	IT / Software / Mobile Equipment Manufacturing	Microsoft, Nokia	<u>Conditionally approved</u> : While Microsoft's acquisition of Nokia's handset business seemed to have little direct impact on competition in China's mobile market because of the parties' relatively small market shares in operating systems and devices, MOFCOM raised concerns that the transaction could result in restrictions in licensing of patents deemed essential to competition for smartphones. The agency argued that Microsoft held essential patents for Android operating system licenses, which has an 80 percent market share of mobile devices in China, and would have an incentive to increase licensing costs to other smartphone makers utilizing the Android operating system. MOFCOM imposed conditions that Microsoft and Nokia were required to honor fair, reasonable, and non-discriminatory (FRAND) commitments for standard-essential patents (SEPs); and to refrain from seeking injunctions for infringement of such SEPs against smartphones produced by Chinese producers.	208 days

May 2014	Mobile Device Manufacturing	Merck kGaA, AZ Electronic Materials	Conditionally approved : Merck kGaA is the world's leading manufacturer of liquid crystal for use in tablets and smartphones, while AZ Electronic Materials has significant global and China market share in photoresist, a complementary product used in tablets and smartphones. MOFCOM found that after the acquisition, Merck would be the world's largest supplier of both, while competitors would only be able to supply one of the two aforementioned raw materials. This, they argued, would thus allow Merck to restrict competition. MOFCOM's conditions for acquisition include: Merck must report any licensing deals it signs in China to the ministry; Merck cannot force Chinese customers to buy products from both companies; and Merck must license liquid crystal patents on non-exclusive terms.	106 days
June 2014	Transportation Shipping	Maersk, MSC, CMA CGM	Rejected : MOFCOM rejected plans by three leading European shipping companies - Denmark's Maersk, Switzerland's MSC, and France's CMA GCM - to form a shipping alliance that would allow the companies to share ships and port facilities. In its decision, MOFCOM noted that the three companies involved in the alliance already held a 46.7 percent market share in the Asia-Europe container shipping line market, and that the alliance would allow them to enhance their market dominance in ways that would restrict competition and unfairly increase their bargaining power against consignors and ports.	273 days
July 2014	Battery Manufacturing	Primearth EV Energy, Toyota Motor China Investment, Toyota Tsusho, Hunan Corun New Energy, Changshu Sinogy Venture Capital (formation of a JV)	Conditionally approved : MOFCOM's review of the proposed JV focused on nickel metal-hydride car batteries, used in the vast majority of hybrid vehicles. Globally, the top four suppliers of nickel metal-hydride car batteries have 97 percent global market share, with Primearth EV Energy (PEVE) among them. MOFCOM considered that, due to high concentration of major players and high market entry barriers, this joint venture could restrict or even eliminate competition in the hybrid vehicle market. Further, MOFCOM believed that the JV would further increase Toyota's dominance in the hybrid vehicle market and thwart development of China's domestic hybrid vehicle companies. The JV was approved with the conditions that it must continue to sell products to third parties on a non-discriminatory basis. Also, within three years, the JV must bring their product(s) market to meet market demand.	184 days



Pricing Investigations Conducted by the National Development and Reform Commission and its Provincial Branches, 2008-present

Since the initial implementation of the AML in 2008, the NDRC has taken significant steps to increase its level of enforcement activity at the central and provincial levels, particularly since early 2013. Between 2008 and 2012, [NDRC conducted nearly 20 price-related investigations](#). By comparison, the agency investigated [more than 80 companies](#) at both the central and provincial levels in 2013, and at least 150 companies and company branches in 2014. These investigations covered a range of sectors, including pharmaceuticals, telecom, banking, food and beverage, infant formula, tourism, and chemicals.

Statements from senior-level Chinese officials in September 2014 stressed that NDRC and its provincial branches have conducted a total of 335 pricing investigations, stating that only 10 percent of these involved foreign companies. However, USCBC's regular information searches make it clear that there is no public information on many of these investigations, making it difficult to clearly determine the objectives, process, and outcomes of NDRC's monopoly investigations. USCBC's detailed searches have only uncovered 36 AML cases launched by NDRC or its provincial entities, of which 27 have been completed. Based on publicly available information about completed cases, 10 were investigated by NDRC at the central level, 16 by NDRC at the provincial level, and one case was investigated jointly.

China commitments at 2014 S&ED and JCCT aim to ensure that its enforcement efforts will be "fair, objective, transparent, and nondiscriminatory." China also committed that its enforcement agencies will "publish the final version of administrative decisions that impose liability on a party under the AML in a timely manner." As of this update, implementation of those commitments is unclear.

The two tables below include information about selected price-related investigations concluded by NDRC and its provincial branches since the launch of the AML in August 2008. It also includes information about pricing investigations that were announced, but—according to public sources—have yet to be concluded. Both lists are based on publicly available information.

Completed Cases

Date Announced	Industry	Location	Companies Involved	Description
March 2010	Rice noodle manufacturing	Guangxi	Juezhihe, Xianyige, Liuzhou Brothers, Yongcai and other involved rice noodle manufacturers	Starting in 2010, eighteen rice noodle manufacturers held a series of meetings to discuss profit sharing and business integration and to set market prices. The Guangxi Price Bureau ruled that these behaviors violated the Price Law and the Antimonopoly Law. The bureau fined three of the leading companies RMB 100,000 (\$14,648) apiece, and ordered fines of RMB 30,000-80,000 (\$4,394-11,718) for other manufacturers according to their behavior.
August 2010	Paper making	Zhejiang	Fuyang Paper Manufacturing Industry Association	In 2010, the Fuyang Paper Manufacturing Industry Association held five meetings with more than 20 attending member companies to discuss the sales price for white paperboard. The Zhejiang Price Bureau ruled that the behavior violated both the Price Law and Antimonopoly Law, and ordered the Association to pay fines of RMB 500,000 (\$73,437).
November 2010	Household products	Hubei	Wuchang Salt Company	In July and August 2010, the Wuchang Salt Company required distributors to purchase both salt and Huolierba detergent powder. After an investigation, the Hubei Price Bureau announced that Wuchang had violated Articles 7 and 17(5) of the AML, but that the company had voluntarily returned illegal revenue to distributors. The Hubei Price Bureau also required Wuchang to take further unspecified corrective measures within the month.
May 2011	Household products	Shanghai	Unilever	In March 2011 Unilever released information to the media that it might raise detergent and soap prices because of raw materials costs, activity that caused customers to engage in "panic buying." NDRC ruled that such behavior violated Article 14(3) of the Price Law, ordered Unilever to cancel its price hike, and fined the group RMB 2 million (\$307,978).
November 2011	Pharmaceuticals	Shandong	Weifang Shuntong, Huaxin	NDRC found that Shutong and Huaxin had signed exclusive distribution agreements with the only two domestic producers, allowing them to control the supply of promethazine hydrochloride, a key raw material for the compound reserpine commonly used in high blood pressure treatments. Those agreements required the producers to obtain approval from both companies before selling product to any other party, thus eliminating competition. NDRC found that these actions violated the AML and the Price Law, and, under the AML, fined Weifang Shuntong RMB 6.877 million (\$1.1 million) and Huaxin RMB 150,000 (\$23,505).

February 2012	Chemicals	Hubei	Hubei Yihua Group	NDRC and its branch in Hubei found that Yihua, one of the world's largest manufacturers of sodium hydrosulphite, had worked with other companies to fix prices and subsequently imposed those prices on its customers. Methods included requiring customers to enter purchase agreements with Yihua and its subsidiaries and imposing conditions on material and equipment suppliers. These actions caused the price of sodium hydrosulphite to increase by 300 percent in 2011. NDRC and its branch in Hubei found that these actions violated the AML and imposed fines of RMB 10.12 million (\$1.6 million).
March 2012	Sea sand	Guangdong	Guangdong Sea Sand Association and its members	Investigation reports stated that several companies took steps to set and manipulate resource fees for mining sea sand under the umbrella of the Guangdong Sea Sand Association. The Guangdong Price Bureau determined these actions violated Article 16(2) of the AML and issued fines and warnings to members of the association. Three members of the association – Guangdong Baohai Sand and Stone, Dongguan Jianghai, and Shenzhen Donghai Century Information Consulting – were collectively fined RMB 759,200 (\$120,565). Other members were issued warnings.
January 2013	LCD panels	nationwide	Samsung, LG, Chimei, AUO, Chunghwa Picture Tubes (CPT), HannStar Display Corporation	NDRC's investigation found that these six foreign LCD manufacturers met repeatedly between 2001 and 2006 to exchange information on the LCD panel market and set or manipulate LCD panel prices in China. NDRC ruled that these behaviors violated Article 14.1 and Article 40 of the Price Law. NDRC ordered the parties to return the overcharged funds to Chinese television enterprises (RMB 172 million (\$27.6 million)). NDRC confiscated other illegal gains (RMB 36.75 million (\$5.9 million)) and ordered the companies to pay fines of RMB 144 million (\$23.1 million). NDRC also ordered the parties to take other corrective measures, including providing fair treatment of all customers in the procurement of high-end or new technology products, and extending the free repair warranty period from 18 to 36 months for LCD panels used on televisions that Chinese television enterprises sell in mainland China.
February 2013	White liquor (baijiu)	Guizhou	Kweichow Moutai Group	The Guizhou Price Bureau ruled that Kweichow Moutai had sought to fix the minimum resale price to third-party distributors since 2012, taking punitive measures against those who did not implement the price. The bureau ruled that such activities violated Article 14 of the AML as a resale price maintenance agreement and fined Kweichow Moutai RMB 247 million (\$39.676million), or one percent of the “related” sales revenue in the previous year.

February 2013	White liquor (baijiu)	Sichuan	Wuliangye Group	The Sichuan Development and Reform Commission found that between 2009 and 2013, Wuliangye signed agreements with over 3,200 independent dealers to limit the lowest resale price for its products. It then enacted punitive measures against those who did not implement the price. The commission ruled that such activities violated Article 14 of the AML as a resale price maintenance agreement and fined Wuliangye RMB 202 million (\$32.4 million), or one percent of the “related” sales revenue in the previous year.
August 2013	Gold jewelry	Shanghai	Shanghai Laofengxiang, Yuyan Plaza	The Shanghai Price Bureau ruled that Shanghai Laofengxiang and several other gold jewelry stores sought to set retail prices within strict bounds for gold jewelry products under the umbrella of the Shanghai Gold & Jewelry Trade Association. The bureau ruled that this behavior violated Articles 13 and 16 of the AML and fined the association RMB 500,000 (\$81,743) and the five stores a total of RMB 10.09 million (\$1.6 million), or one percent of their previous year's sales.
August 2013	Milk powder	nationwide	Biostime, Mead Johnson Nutrition, Dumex, Abbott, FrieslandCampina, Wyeth, Fonterra, Beingmate, Meiji	The nine milk powder companies were accused of fixing resale prices for distributors and retailers, including fixing or restricting prices for resale to a third party and adopting punitive measures for parties that do not meet those requirements. NDRC judged these behaviors to violate Article 14 of the AML and fined six of these producers a total of RMB 668.7 million (\$109.3 million). Fines ranged from three to six percent of prior year revenue.
September 2013	Tourism	Hainan	Sanya Platinum Crystal Crafts, Crystal Source, Good Royal Crystal	The Hainan Price Bureau ruled that these three companies formed a cartel, holding coordination meetings and signing a formal agreement in June 2012 to fix prices, commission rates, and market share for crystal products. They also formed a joint bank account to guarantee the agreement. The bureau found these activities violated Article 13 of the AML. Sanya Platinum Crystal Crafts and Crystal Source were fined RMB 3.6 million (\$588,134) (four percent of the previous year's revenue) and RMB 1.35 million (\$220,550) (two percent of the previous year's revenue), respectively, for the monopoly agreement. They were also fined RMB 99,000 (\$16,174) and RMB 90,000 (\$14,703), respectively, for concealing, transferring, or destroying financial data and evidence. Good Royal Crystal was exempt from punishment due to “cooperation.”

September 2013	Tourism	Hainan, Yunnan	Tourist shops selling crystal and spirulina products	Tourist-oriented shops selling crystal products and spirulina (a popular Chinese herbal product) in the tourist hubs of Sanya, Hainan, and Lijiang, Yunnan were accused of using price discounts to lure customers. According to the investigation, the shops first raised prices on these products far above cost and then offered discounts to bring prices back down. Sticker prices for these products were often tens or hundreds of times the cost of the products. Pricing agencies in Hainan and Yunnan found these practices to violate Article 14(4) of the Price Law, and fined each offending shop RMB 300,000 (\$49,011).
September 2013	Tourism	Yunnan	Eight travel agencies in Yunnan, including the Lijiang branch of Ctrip, under the guidance of the Lijiang Tourism Association Travel Agency Division	The Yunnan Development and Reform Commission ruled that eight travel agencies, operating under the umbrella of the Lijiang Tourism Association's Travel Agency Division, signed agreements in 2009 and 2010 to set prices for tour groups, sharing RMB 227 million (\$37.1 million) in profits over two years. The commission found this conduct violated Articles 13 and 16 of the AML as a price monopoly agreement. The agency was fined RMB 500,000 (US \$81,685) and the travel agencies were collectively fined RMB 3.35 million (US \$547,291), or five percent of the previous year's revenue.
September 2013	Tourism	Hainan	Travel agencies in Hainan, including Hainan Haikou Civil Tourism Agency and the Hainan Tongxing Tianxia Travel Agency	The Hainan Price Bureau ruled that several travel agencies in Hainan used bait-and-switch tactics to lure customers. They priced tours at or below cost in order to attract tourists. They then made up for those losses with high commissions from shopping activities organized by the tour groups and pressuring tourists to purchase. The bureau ruled that such behavior violates Article 14 of the Price Law and fined each agency RMB 300,000 (\$49,011).
December 2013	Insurance	Hunan	Hunan Loudi City Insurance Industry Association and 12 domestic insurance-related companies	According to the investigation, the Hunan Loudi Insurance Industry Association organized companies to conduct anticompetitive behavior, including setting unified prices for new car insurance discount rates, dividing up the market, and signing agreements with the association-organized automobile service center. The Hunan Price Bureau found that this behavior violated the AML and fined the association and six of the insurance companies RMB 2.19 million (\$361,746). The other five companies were exempt from penalties for cooperating with authorities.

February 2014	Banking	nationwide	Domestic commercial banks (unnamed)	Chinese banks were accused of imposing arbitrary charges and fees on customers. In February 2014, NDRC held a press conference announcing that to date it has ordered 64 branches of different banks to return RMB 409 million (\$66.5 million) in fees from those charges, and imposed fines of RMB 416 million (\$67.7 million). Further investigations and fines are possible.
May 2014	Telecommunications	nationwide	InterDigital	InterDigital was accused of abuse of market dominance, charging discriminative high price patent license fees for China's communications equipment manufacturers, and issuing bundled license for non-standard essential patents and standard essential patents. In June 2014, NDRC announced that the investigation was suspended.
May 2014	Vision care	nationwide	Essilor, Zeiss, Nikon, Bausch & Lomb, Johnson & Johnson, Hoya, Weicon	Seven manufacturers of eyeglasses and contact lenses were accused of setting minimum resale prices and running promotions that effectively served as resale price maintenance (RPM) arrangements. NDRC determined that their activities violated Article 14 of the AML and fined five of the manufacturers a total of more than RMB 19 million (\$3.0 million), with rates of either one or two percent of the previous year's sales.
July 2014	Brick manufacturing	Hainan	Five domestic manufacturers of aerated bricks: Hainan Houde New Century Building Materials; Guangyiduo New Environmentally Friendly Wall Materials; Hainan Xinhongda Building Materials; Hainan Guangsheng New Building Materials; and Hainan Hailiyuan Industrial	According to the investigation reports, in October 2012, five manufacturers of aerated bricks – bricks with holes to allow airflow – established without authorization an aerated brick industry association to harmonize sales price, supervision and control and statistics for each company's production, sales, and shipments. The five companies subsequently agreed upon and coordinated price increases, signed monopoly agreements to divide sales. Two companies were exempted from fines due to their cooperation; the other three companies were fined RMB 530,000 (\$85,879), or one percent of the previous year's sales.

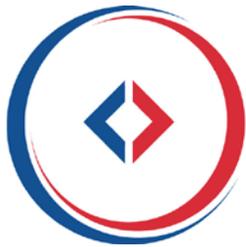
August 2014	Automotive	nationwide	Hitachi, Denso, Aisan, Mitsubishi Electric, Mitsuba, Yazaki, Furukawa Electric, Sumitomo Electric, Nachi-Fujikoshi, NSK, JTEKT, and NTN	NDRC announced that 12 Japanese companies – eight auto parts manufacturers and four bearings manufacturers – had held frequent consultations to set and influence pricing of vehicles, auto parts, and bearings. NDRC exempted Hitachi and Nachi-Fujikoshi Corporation from fines due to their collaboration, but issued high fines for the other companies: RMB 832 million (\$135.1 million) for the other seven auto parts companies and RMB 403.4 million (\$65.5 million) for the other three bearings companies. These figures range between four and eight percent of the company’s previous year sales.
August 2014	Automotive	Hubei	Four Mercedes-Benz dealerships	The Hubei Price Bureau announced that four Mercedes-Benz dealerships had overcharged customers for the pre-delivery inspection (PDI) of purchased automobiles, and had colluded to set prices. The bureau fined the dealerships a collective total of RMB 1.63 million (\$264,666).
September 2014	Insurance	Zhejiang	Zhejiang Insurance Industry Association and 23 property insurance companies	NDRC announced that Zhejiang Insurance Industry Association and 23 property insurance companies had held frequent consultations to set and influence discount rate of new vehicles and unified commercial commission for auto insurance agencies. NDRC ruled that the association and companies had violated the AML, fining the association RMB 500,000 (\$81,457) and 23 provincial level property insurance companies a total of RMB 110.2 million (\$18.0 million), or one percent of the previous year’s sales revenue. NDRC also announced that it waived or reduced fines for three insurance companies due to their cooperation. The investigation reports indicated that initial investigations of a number of other foreign and domestic insurance companies in Zhejiang indicated that they had not participated in these agreements; those companies were not charged.
September 2014	Cement	Jilin	Three domestic cement companies: Yatai, Northern and Jidong	The Jilin Price Bureau announced that Yatai, Northern and Jidong were found to have held several consultations to reach an agreement to set cement price and implementation policies. Investigators ruled that these activities had violated the AML, and fined Yatai and Jidong two percent of their sales revenue in 2012, and fined Northern for one percent of its sales revenue in 2012. Those fines collectively added up to RMB 114,390 (\$18,636).

September 2014	Automotive	Hubei	FAW-Audi Sales, and 10 Audi dealers in Hubei	The Hubei Price Bureau announced that FAW-Audi Sales Company and the 10 dealers had reached monopoly agreements to set and influence vehicle sale and maintenance prices in violation of the AML. The bureau fined FAW-Audi Sales RMB 248.58 million (\$40.4 million), or six percent of its previous year's sales revenue, while fining eight dealers a total of RMB 29.96 million (\$4.9 million): seven dealers were fined one to two percent of their sales revenue of the previous year; one dealer was fined 0.5 percent of its sales revenue of the previous year; and two dealers were exempted from penalties.
February 2015	Telecom	nationwide	Qualcomm	NDRC fined Qualcomm RMB 6.088 billion (\$971.7 million ^[1]), or eight percent of Qualcomm's sales revenue in China in 2013, claiming violations of the AML. In its decision, NDRC argued that Qualcomm holds a dominant market position in several key telecom standard-essential patents and in chips, and had used that position to charge high royalty rates, tie wireless and non-wireless patents, and attach conditions to chip sales.
April 2015	Automotive	Jiangsu	Mercedes-Benz and its dealers in Nanjing, Wuxi and Suzhou	The Jiangsu Price Bureau announced that Mercedes-Benz had reached a monopoly agreement with its dealers in Jiangsu province by enforcing minimum prices for dealers to charge for its products. It also reached and implemented fixed-price agreements for part of the components. The bureau found that Mercedes-Benz and its dealers violated the AML, and fined Mercedes-Benz RMB 350 million (\$56.4 million), or one percent of its sales revenue of the previous year. The dealers were fined a total of RMB 7.86 million (\$1.27 million).

Ongoing Cases

Date Launched	Industry	Companies Involved	Potential Issues
November 2011	Telecommunications	China Mobile, China Unicom	Alleged abuse of market dominance through price discrimination
August 2012	E-Commerce	360 Buy, Gome, Suning	Alleged illegal and fraudulent behavior while engaging in low-cost competition
March 2013	Cement	Cement companies nationwide	Alleged supply restrictions

July 2013	Pharmaceutical	GlaxoSmithKline, Merck, Astellas, Novartis, Boehringer Ingelheim, Baxter International, Fresenius, UCB, and many others	Alleged unfair import pricing (33 companies); internal cost structure (transfer pricing) (27 companies)
August 2013	Automobile	Imported cars and domestic auto joint ventures (no specific companies named) <i>(Note: this is likely related to a series of automotive-related investigations announced in 2014.)</i>	Alleged “excessive” pricing
April 2014	Pharmaceutical	Nine unnamed pharmaceutical companies across six provinces, including Jiangsu, Anhui, Zhejiang, Hebei, Liaoning and Shanghai	Alleged monopolistic pricing practices
July 2014	Automotive	Luxury car makers, including Mercedes-Benz, Audi, Toyota, Land Rover, and others	Alleged abuse of dominant market position; imposition of horizontal and vertical restraints on competition (initial findings released, but fines not yet announced)
August 2014	Express delivery	Domestic express delivery companies in Chongqing and Xiangtan, Hunan, including HT Express, STO Express, TK Express, YTO Express, Yunda, and ZTO Express	Alleged illegal pricing behavior, including collusion
August 2014	Real estate	Real estate brokers in Tianjin (no specific companies named as targets)	Alleged monopolistic pricing practices



Monopoly Investigations Conducted by SAIC and Its Provincial Branches, 2008-present

Since the initial implementation of the AML in 2008, the SAIC has gradually increased its level of enforcement activity. Based on publicly available sources, SAIC and its provincial branches investigated 23 companies in 2014, an increase from the nearly 15 companies investigated in 2013. In total, [SAIC's dedicated information platform for monopoly investigations](#) includes information on 22 concluded cases, while public news sources indicate two additional ongoing monopoly investigations. The actual number of investigations is likely higher, as it may include cases where SAIC has investigated but not imposed penalties. For example, in a [February 2014 press conference](#), SAIC Deputy Commissioner Sun Hongzhi said that SAIC had authorized its provincial branches to investigate more than 30 competition cases between 2008 and 2014, even though only 14 of those cases (13 completed cases and one ongoing investigation) had been publically announced at that point.

The two tables below include information about price-related investigations that were closed by SAIC and its provincial branches since the launch of the AML in August 2008, including information from SAIC's official platform and other government and news sources. It also contains information about monopoly investigations that were announced – but according to public sources – have not yet concluded.

Completed Cases

Date Announced	Industry	Location	Companies Involved	Description
August 2010	Concrete	Jiangsu	Lianyungang Construction Material and Machinery Association and 16 member companies	Jiangsu investigators ruled that in 2009, the Lianyungang Construction Material and Machinery Association's Concrete Committee and 16 member companies signed agreements to monopolize the market. The deal prohibited all involved from independently signing contracts with buyers. The Jiangsu AIC ruled that this behavior constituted an illegal monopoly agreement under the AML. It confiscated illegal profits of more than RMB 136,481.20 (\$20,046) and fined five participants in the cartel a combined total of RMB 530,723.19 (\$77,950).

April 2011	Liquefied Petroleum Gas	Jiangxi	Taihe County Huawei LPG Station and six other gas companies	According to the investigation report, Taihe County Huawei Liquefied Petroleum Gas (LPG) Station in October 2008 signed an agreement with six other LPG companies to monopolize and divide up the market, with each company getting a specific piece. The Jiangxi AIC found such behavior illegal under Article 14(1) of the AML, and as a result, confiscated illegal gains of RMB 205,537 (\$31,665) and fined Taihe County Huawei LPG Station RMB 130,230 (\$20,063).
January 2012	Second-hand automobiles	Henan	11 secondhand car dealerships in Anyang, Henan	SAIC ruled that a group of three secondhand auto dealerships in Anyang, Henan formed a cartel and signed an agreement to set a uniform price and market share in 2007. By 2009, this cartel expanded to include 11 dealerships. SAIC ruled that these activities violated Article 13 of the Antimonopoly Agreement. It then confiscated RMB 1.468 million (\$232,691) in illegal profits and imposed a fine of RMB 265,000 (\$42,005) on the participants.
August 2012	Cement	Liaoning	Liaoning Construction Material Industry Association and 12 member companies	According to investigation reports, the Liaoning Construction Material Industry Association's Cement Committee and 12 member companies from central Liaoning signed agreements in 2010 to monopolize the market, control production, and set market share. The Liaoning AIC ruled that their behavior constituted an illegal monopoly agreement under the AML and imposed fines of RMB 16.37 million (\$2.6 million) on the association and the 12 involved members.
November 2012	Insurance	Hunan	Yongzhou Insurance Association and 10 member companies	SAIC ruled that the Yongzhou (Hunan) Insurance Industry Association and 12 insurance companies in October 2011 signed an agreement establishing a new car insurance service center. This center served as a window for consumer purchases of new car insurance, of which 10 proceeded to set-up. SAIC judged the agreement to be an illegal monopoly agreement under the Antimonopoly Agreement, fining the insurance companies RMB 400,000 (\$64,194) and the twelve companies a combined total of RMB 972,000 (\$155,990).

December 2012	Insurance	Hunan	Zhangjiajie Insurance Association and 8 member companies	Investigation reports indicate that the Zhangjiajie (Hunan) Insurance Industry Association and 8 insurance companies in October 2010 signed agreements to establish a new car insurance service center as a window for consumer purchases of new car insurance. SAIC determined the agreement was an illegal monopoly agreement under the Antimonopoly Agreement and fined the association RMB 400,000 (\$64,192).
December 2012	Insurance	Hunan	Changde Insurance Association and 9 member companies	SAIC ruled that the Changde (Hunan) Insurance Industry Association and nine insurance companies in May 2006 signed agreements to establish a new car insurance service center as a window for consumer purchases of new car insurance. SAIC believed the agreement was an illegal monopoly agreement under the Antimonopoly Agreement and fined the association RMB 450,000 (\$72,216).
December 2012	Insurance	Hunan	Chenzhou Insurance Association and 14 member companies	SAIC investigation reports indicate that the Chenzhou (Hunan) Insurance Industry Association and 10 insurance companies in June 2007 signed an agreement to establish a new car insurance service center as a window for consumer purchases of new car insurance. Ultimately, 14 companies participated. SAIC judged the agreement to be an illegal monopoly agreement under the Antimonopoly Agreement and fined the association RMB 450,000 (\$72,216).
December 2012	Concrete	Zhejiang	Jiangshan Tiger Product Concrete, Jiangshan Yongcheng Concrete, and Jiangshan Hengjiang Product Concrete	The Zhejiang AIC ruled that three concrete companies – Jiangshan Tiger Product Concrete, Jiangshan Yongcheng Concrete, and Jiangshan Hengjiang Product Concrete – in September 2009 made an oral agreement to divide the city's concrete market, set prices, and eliminate competition between them. The Zhejiang AIC judged the agreement to be an illegal monopoly agreement under the Antimonopoly Agreement and fined the three companies a total of RMB 1.18 million (\$189,367).

March 2013	Construction Equipment	Zhejiang	Cixi Construction and Engineering Testing Association, Cixi Building and Engineering Quality Supervision Station Energy Office, and three companies	The Zhejiang AIC stated that the Cixi Construction and Engineering Testing Association, along with the Cixi Building and Engineering Quality Supervision Station's Energy Office and three companies, signed in March 2010 an agreement to divide market share among the three companies and set ground rules for competition. The Zhejiang AIC determined that this was illegal behavior, but decided in early 2012 to suspend the investigation for one year based on initial submissions provided by the parties. In March 2013, the Zhejiang AIC closed the investigation without punishing the enterprises.
March 2013	Bricks/ceramics	Sichuan	Yibin Building Material Industry Association Brick Committee, three of its member companies, and one individual	The Sichuan AIC ruled that three major brickmaking companies working under the Yibin Building Material Industry Association Brick Committee signed a series of agreements in May 2009 designed to limit the output of bricks in the market and control market share. The Sichuan AIC judged the agreement to be an illegal monopoly agreement under the Antimonopoly Agreement and fined the three companies a total of RMB 1 million (\$161,093). The Sichuan AIC also fined an individual involved in the case RMB 60,000 (\$9,666).
April 2013	Tourism	Yunnan	Xishuangbanna Tourism Association, Xishuangbanna Travel Agency Association	According to investigation reports, the Xishuangbanna Tourism Association launched a new information platform in 2003. Between 2009 and 2011, the association convinced more than 80 other groups—hotels, attraction, passenger car services, and travel agencies—to sign on. This agreement promoted specific tours to specific stops with punitive actions for those who deviated from those recommendations. Meanwhile, the Xishuangbanna Travel Agency Association and 24 travel agencies signed agreements to set prices and itineraries for travel. The Yunnan AIC found the behavior of both organizations to violate the AML and fined each organization RMB 400,000 (\$64,859).

July 2013	Civilian Blasting	Guizhou	Qianzhong Civilian Blasting Equipment Operating Company	The Guizhou Anshun AIC found that a local subsidiary of the Qianzhong Civilian Blasting Equipment Operating Company was guilty of abuse of market dominance and excessive prices and fined the company RMB 127,000 (\$20,715).
December 2013	Water supply engineering	Guangdong	Huizhou Daya Bay Yiyuan Purified Water	Investigation reports state that Huizhou Daya Bay Yiyuan Purified Water used its strong market position to require local real estate companies to sign agreements bundling water supply with other services. The Guangdong AIC determined that Yiyuan's behavior constituted a violation of Article 17(5) of the AML and required Huizhou halt business practices, turn over illegal gains of just over RMB 860,000 (\$142,056), and to pay a fine of two percent of Yiyuan's 2012 revenue, or just under RMB 2.4 million (\$396,434).
June 2014	Sports and entertainment	Beijing	Shankai Sports International	Shankai Sports International – the authorized vendor of package tours to the 2014 FIFA World Cup in Brazil for China, Hong Kong, and Macao – was accused of bundling various products and services, such as game tickets, accommodation, food and beverages, multilingual hostesses, parking, and requiring customers to purchase set bundles. This violated a March 2011 agreement with Beijing China Travel Service Company in which that agency was assigned to arrange such hotel, transportation, and tourism services. The Beijing AIC launched an investigation, but suspended it in June 2014, stating that Shankai admitted that its actions violated the AML and it took undisclosed steps to address concerns. ⁵

⁵ Since Shankai had carried out corrective measures as it promised, Beijing AIC [terminated](#) the investigation in January 2015.

July 2014	Fireworks	Inner Mongolia	6 fireworks companies in Chifeng, Inner Mongolia	Six fireworks companies in Chifeng, Inner Mongolia that were designated by local product production safety bureaus as the sole wholesalers for various fireworks products were accused of abusing their dominant market position. Specifically, these companies were accused of requiring distributors to apply for fireworks purchases, use standard markings, and pay for fireworks in advance throughout the year or see their purchasing quotas cut. Four of the companies also signed an illegal monopoly agreement. The Inner Mongolia AIC fined the six companies RMB 583,700 (\$94,580).
July 2014	Tobacco	Inner Mongolia	Chifeng Subsidiary of the Inner Mongolia Tobacco Company	The Chifeng Subsidiary of the Inner Mongolia Tobacco Company was accused of using its market position to bundle sales, requiring retailers to purchase both popular and less popular cigarette products. The Inner Mongolia AIC fined the company RMB 5.95 million (\$964,108), or one percent of sales.
October 2014	Sand and gravel mining	Chongqing	4 quarry operators in Wuxi County, Chongqing	Four Chongqing quarry operators in Wuxi County were accused of setting a verbal monopoly agreement in order to divide the sand and gravel sales required to construct the local portion of the Fengxi Highway. The Chongqing AIC imposed fines of RMB 400,000 (\$65,440) on the four operators.
October 2014	Tobacco	Jiangsu	Pizhou Subsidiary of Xuzhou Tobacco Company	The head of the Pizhou Subsidiary of the Xuzhou Tobacco Company (Dai Xiangqin) was accused of abusing his company's dominant market position to unfairly determine supply allotted to different retailers without reasonable cause. The Jiangsu AIC fined Dai just over RMB 1.72 million (\$281,394), or one percent of the sales revenue made from selling cigarettes under limited supply conditions.

November 2014	Natural gas	Chongqing	Chongqing Gas Group	Chongqing Gas Group Co., Ltd. overcharged its customers for natural gas using fee rates that were inflated using a “correction coefficient.” The Chongqing AIC posted an April decision ruling that the activity was “abuse of market dominance”, and had violated the AML’s Article 17. Since the company had cooperated, the Chongqing AIC decided to lighten its punishment based on company cooperation and attempts to rectify its behavior, as well as the relatively narrow application of the “correction coefficient.” It fined the company RMB 1.79 million (\$291,500), or one percent of its 2010 sales revenue.
December 2014	Concrete	Zhejiang	Zhejiang Shangyu Concrete Association and 8 member companies	The Concrete Association and 8 member companies in Shangyu, Zhejiang were determined to be using monopoly agreements to divide local market share, in violation of the AML’s Article 16 and Article 46. The Zhejiang AIC fined the association RMB 10,000 (\$1,611), and imposed fines of between RMB 10,000 (\$1,611) and RMB 400,000 (\$64,447) on the eight member companies.
February 2015	Water supply	Hainan	Hainan Dongfang Water Company	Dongfang Water Company was accused of abusing its market dominance to impose additional water deposit on the new users when providing water supplying services in the city, in violation of the AML’s Article 17 and Article 47. The Hainan AIC confiscated the illegal gains of RMB 38,521 (\$6,148) and fined the company RMB 593,208 (\$94,683), or two percent of its sales revenue of the previous year.

Ongoing Cases

Date Launched	Industry	Companies involved	Potential Issues
July 2013	Food and beverage packaging	Tetra Pak	Alleged abuse of market dominance
July 2014	Information technology	Microsoft	Alleged abuse of market dominance

