

China's Anti-Monopoly Law and Its Enforcement against State Monopolies: Achievements and Limitations

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Abstract

This paper tries to briefly introduce China's attempt to control state restraints with the Anti-monopoly Law of the People's Republic of China ("AML") against the two most common forms of China's state restraints, the administrative monopolies and the monopolies carried out by state-owned enterprises. The article starts by presenting the problems of state restraints in the economic context of China, and then it sets forth the relevant legal framework against the state restraints under the AML, which includes both the administrative-oriented enforcement conducted by the anti-monopoly enforcement authorities, and the judicial-oriented enforcement. The analysis of the relevant high profile cases will also be included in this section. The article moves on to evaluate the effectiveness of such enforcement and to provide the observations on the achievements and limitations of the AML enforcement against state monopolies. Lastly, the article suggests an outlook of the reforms where China could implement to deal with illegal state involvements in the economy.

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I. Introduction

On August 1, 2008, China's AML², the first comprehensive anti-monopoly legislation in China, came into effect. The AML is expected to serve as the legal foundation for the sustained development of China's thriving market economy. Over the past decades, China has made extraordinary economic progress in a relatively short period of time. Notwithstanding this development, China's transition to a modern market system is still on-going and the legacy of a centrally planned and highly administered and regulated system still remains in some areas of the economy.

This paper tries to briefly introduce China's attempt to control state restraints with the Anti-monopoly Law of the People's Republic of China ("AML") against the two most common forms of China's state restraints, the administrative monopolies and the monopolies carried out by state-owned enterprises ("SOEs"). The article starts by presenting the problems of state restraints in the economic context of China, and then it sets forth the relevant legal framework against the state restraints under the AML, which includes both the administrative-oriented enforcement conducted by the anti-monopoly enforcement authorities ("AMEAs")³, and the judicial-oriented enforcement. The analysis of the relevant high profile cases will also be included in this section. The article moves on to evaluate the effectiveness of such enforcement and to provide the observations on the achievements and limitations of the AML enforcement against state monopolies. Lastly, the article suggests an outlook of the reforms where China could implement to deal with illegal state involvements in the economy.

² The AML was promulgated by the Standing Committee of the National People's Conference on August 30, 2007, and went into effect on August 1, 2008.

³ China's AML enforcement is shared by three government authorities: the Ministry of Commerce ("MOFCOM") has exclusive competence for merger control; the State Administration of Industry and Commerce ("SAIC") shares responsibility with the National Development and Reform Commission ("NDRC") for the enforcement of the AML's non-merger provisions. Further, the SAIC is assigned oversight of non-price related conduct, and the NDRC handles price-related offenses.

II. Administrative Monopolies

1. *The Problem of Administrative Monopolies in China*

Possibly without exception, every country with a functioning government has administrative monopolies to some extent.⁴ Economic theory generally holds that administrative monopolies, like other monopolies, hamper overall social welfare because they lead to increased prices, reduced output, and restricted competition. In China, as in other countries, an administrative monopoly is fundamentally an issue of economic governance, i.e., the relationship between the state and the market. It is a well-recognized problem in China and a basic aspect of the economy that China is seeking to reform.

As some scholars suggest,⁵ one of the most intriguing sections of the AML is its Chapter V on *Abuse of Administrative Power to Eliminate or Restrict Competition*, which aims to prevent government agencies from using their power to interfere in competition, especially the government agencies at the local level.

2. *Legal Framework to Deal with Administrative Monopolies*

The AML prohibits the abuse of administrative powers that eliminates or restricts competition or favors enterprises at the expense of other market players. Specific forms of abuse and their consequences include:

- Protecting local companies at the expense of other companies by way of discriminatory treatment, which often leads to the creation of regional monopolies;

⁴ Jacob S. Schneider, *Administrative Monopoly and China's New Anti-Monopoly Law: Lessons from Europe's State Aid Doctrine*, 87 WASH. U. L. REV. 869, pp 1-2 (2010).

⁵ See, e.g., Salil K. Mehra & Meng Yanbei, *Against Antitrust Functionalism: Reconsidering China's Antimonopoly Law*, 49 VA. J. INT'L L., p 379, p 383 (2008).

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- Creating barriers to the trade among provinces, which often leads to market fragmentation at the national level, preventing the free movement of goods, services, capital, and technology; and
- Providing regulated industries and SOEs with preferential treatment or protection (at both the local and regional level), which often leads to the enactment or maintenance of rules and measures contrary to AML provisions, especially Articles 13, 14, and 17. Other common consequences of all these abuses are corruption and rent-seeking.

As for the legal requirements to qualify as an abuse of administrative monopoly, although there is no explicit test in the AML, some scholars consider that abuse of administrative power is composed of three elements: the subject, the behavior, and the consequence. The subjects are the administrative authorities or other organizations authorized by laws and regulations; the behavior is the misuse of administrative power with no legal basis or in violation of the relevant laws; and the consequence is the elimination or restriction of competition in a relevant market.⁶

Article 51 of the AML serves as the primary enforcement provision for Chapter V, instead of directly granting the AMEAs the power to punish government agencies for violating the AML, establishes that the AMEAs can only identify such violations and propose corrective actions to the relevant superior authorities of the agencies in question. According to the AML, the government officials who are directly in charge and/or other directly responsible public servants can be individually held liable and disciplined. In addition, under provisions promulgated by the SAIC,⁷ undertakings that benefit from an AML violation by participating in cartel arrangements or engaging in abuses of dominance—even though under the order or arrangements of government agencies—are subject to the fine ranging from 1 to 10% of their previous year's sales revenue.

⁶ Zheng Peng Cheng, *The Legal Studies related to Administrative Monopoly*, p 43 (2002).

⁷ Provisions for Administrative Authorities for Industry and Commerce on Prohibiting Abuses of Dominant Market Positions were promulgated on Dec. 31, 2010, and came into effect on Feb. 1, 2011.

The enforcement power granted in Chapter V is shared between the NDRC, which is responsible for price-related anti-competitive conducts, and the SAIC, which is responsible for non-price related conducts. The NDRC and the SAIC can also delegate their powers to their provincial counterparts. To provide more clarity and details regarding the procedures, the NDRC⁸ and SAIC⁹ each promulgated their respective provisions on the enforcement regarding abuses of administrative monopolies.

3. *Enforcement against Administrative Monopolies*

As of this writing, we have not seen any decisions published by the SAIC on AML enforcement against administrative monopolies.¹⁰ In contrast, the NDRC (including its provincial counterparts) have published three decisions relating to administrative monopolies.

A. *Case 1: The Yunnan Communication Administration's Abuse of Administrative Power by Forcing Companies to Engage in Monopolistic Activities*

In 2014, the Yunnan provincial branch of the NDRC discovered that the Yunnan Provincial Communication Administration (“YPCA”) had organized a cartel arrangement involving restrictions on the refunding of benefits to customers. The cartel was carried

⁸ The NDRC promulgated Provisions on Anti-Price Monopoly, which came into effect on Feb. 1, 2011, and Regulations on Procedures for Enforcement of Administrative Law on Anti-Price Monopoly, which came into effect on Feb. 1, 2011.

⁹ The SAIC promulgated Provisions for Administrative Authorities for Industry and Commerce on Prohibiting Abuses of Dominant Market Positions on Dec. 31, 2010, which came into effect on Feb. 1, 2011, and Provisions for Administrative Authorities for Industry and Commerce to Prevent Abuses of Administrative Powers to Exclude or Restrain Competition on Dec. 31, 2010, which came to effect on Feb. 1, 2011.

¹⁰ According to Professor Wang Xiaoye, the SAIC (including its local counterparts) have assisted in the investigation of 519 cases involving state monopolies (including administrative monopolies as well as anticompetitive conduct carried out by SOEs) between 1995 and 2005. However, there have been no formal decisions involving administrative monopolies published by the SAIC (including its local counterparts) so far. See Wang Xiaoye, *Reconsideration into State Monopoly Problems*, p 4, L. & SOC'Y (July 2009). See also SAIC, *ANTITRUST CLASSIC DECISIONS AND AML INVESTIGATIONS* (2007).

out by the Yunnan branches of China Mobile, China Telecom, China Unicom, and China Railcom.

The NDRC concluded that the cartel arrangement facilitated by the YPCA and entered into by four major competitors was in violation of Articles 8 and 36 of the AML. The NDRC reported this suspected violation to the National Communication Administration (“NCA”), the sector’s supervisory authority and the superior authority that according to Article 51 of the AML holds the power to rectify such a violation.

In the end, the NCA ordered the YPCA to immediately cease the illegal practice.

Moreover, China Mobile, China Telecom, and China Unicom each received a fine equaling two percent of their previous year’s sales revenue for being part of the cartel. China Railcom did not comply with the cartel, and therefore was given a reduced penalty of RMB 500,000.

B. Case 2: The Shandong Provincial Department of Transport’s Abuse of Administrative Power in the Market for Road Navigation Satellite Systems

On March 27, 2014, the NDRC deemed that the Shandong Department of Transport (“Shandong DOT”) was in violation of Articles 8, 32, and 37 of the AML for abusing its administrative power to exclude and restrict competition in the vehicle monitoring platform services and vehicle mount terminal markets.

The NDRC found that, since 2011, Shandong DOT had initiated several policies to require information on three types of vehicle (tourist group-use vehicles, certain types of passenger vehicles, and vehicles used for transporting hazardous chemicals, fireworks, firecrackers, and civil explosives) to be connected to a provincial technological service platform, and information related to heavy-duty trucks and semi-trailer towing vehicles would be connected to another system called the “Bei Dou dynamic information platform.”

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The Shandong DOT further specified that the technological support services for the two technology platforms would be exclusively provided by a company named 9TONG. It also required that the vehicle satellite positioning terminals would have to pass testing organized by 9TONG in order to enter the Shandong market.

The NDRC found that such conduct excluded and restricted competition in the vehicle monitoring and control platform service and the vehicle mount terminal markets, deprived road transportation companies of the freedom to choose products, and unreasonably pushed up platform service fees and the sale prices of vehicle mount terminal products.

Consequently, the NDRC put forward suggestions that the Shandong provincial government should order Shandong DOT to rectify its behavior in the following ways:

- Fully open up the vehicle monitoring and control market for two-passenger, hazardous, heavy-duty truck, and semi-trailer towing vehicles, and allow road freight carriers to freely choose the platforms to be connected to the Ministry of Transportation's ("MOT") national monitoring and service platform;
- Remove restrictions on market entry for terminal product providers in Shandong Province, allow road transportation companies to freely choose terminals that gained MOT approval, and allow qualified terminals to be connected to the relevant monitoring and control platforms; and
- Scrap the earlier policy of capping the prices of vehicle satellite positioning terminals at the bid-winning price in the MOT's BeiDou demo projects.

C. Case 3: The Hebei Provincial Government's Abuse of Administrative Power by Enforcing a Discriminatory Toll Policy

In September 2014, the NDRC found that the Hebei provincial government was in violation of Articles 8 and 33 of the AML for enforcing a discriminatory toll policy and abusing its administrative power.

In its investigation, the NDRC found that the Transportation Department, the Finance Department, and the Price Bureau in Hebei province had jointly issued a policy in October 2013 under which local passenger transport companies in Hebei enjoyed a 50% discount on toll roads. Non-Hebei companies did not receive any discounts. The discriminatory toll charge was a form of subsidy for local operators, giving them an unfair competitive edge by allowing them to run at a far lower cost than non-local competitors.

According to the report published on the NDRC's website, the NDRC sent an enforcement letter to the Hebei provincial government asking the three departments to rectify the discriminatory policy.

D. Conclusion: the AMEAs' Enforcement Approach Toward Administrative Monopolies

In view of the decisions published by the NDRC, the agency's enforcement approach towards administrative monopolies could be summarized as follows:

- (a) In contrast with other AML provisions, Chapter V on administrative monopolies targets the conduct of government agencies, rather than the conduct of private undertakings. The factors to be taken into account when assessing whether there is abusive government behavior are therefore different from those relating to abuse of dominance by private undertakings.
- (b) In order to identify whether certain actions are illegal under Chapter V, an investigation to uncover the facts, such as whether the government agencies carried

out the proscribed acts or not, is sufficient.¹¹ Chapter V, in this regard, largely resembles the *per se* approach to illegality to the extent it does not require a detailed analysis of the trade-off between the costs and benefits of certain actions before reaching a decision. Chapter V thus does not necessarily require a market definition, which is normally a pre-requisite to establish that a private undertaking has a dominant position.

- (c) It is important to note there are no justification defenses provided under Chapter V. When a private company undertakes certain acts that are in violation of the AML based on government legislative measures,¹² the company cannot use the compliance with such measures as a defense for its AML violation. It therefore seems that the AML opts for a severe approach when dealing with the abuses of administrative monopolies.
- (d) Article 51 only grants the AMEAs the power to make suggestions. As such, the AMEAs cannot impose direct punishment. All they can do is report the violation to the superior authority of the government agency that is violating the AML and make recommendations.

III. The Anti-Competition Conduct of SOEs

1. SOEs in China

With the establishment of the People's Republic of China in 1949, the Chinese government opted for a centrally planned economy, where neither private enterprises nor significant foreign investments were allowed. As a consequence, SOEs were the main actors in almost all economic sectors in China.

¹¹ The main categories of prohibited conduct contained in Chapter V are the following: local protectionism and unequal treatment of local and non-local goods; protectionist bidding procedures; forcing businesses to engage in monopolistic activities; and other forms of unequal treatment of non-local businesses.

¹² The government legislative measures refer to the ones issued by the relevant government agencies, rather than legislation issued by the People's Congress at the various levels.

After Deng Xiaoping's adoption of his policy to open up the economy in 1972, and especially during the early 1990s, China implemented several measures to introduce more competition into stagnant sectors controlled by the state. As the owner of the SOEs, the government restructured some of these enterprises in order to stimulate competition in specific sectors (also known as "the liberalization process"). While China was able to reduce the role of SOEs in some economic sectors, SOEs still have a significant, or even increased, control in certain sectors that are deemed of strategic importance to the economy. In fact, on December 18, 2006, the State Assets Supervision and Management Commission announced that seven strategic industries, including petrochemicals, telecommunications, coal, civil aviation, and waterway transportation, would be controlled by SOEs.¹³ In addition, for other important industries, including automobiles, steel, and technology, the government will seek to maintain a "strong influence" through government held capital in the leading companies.¹⁴

2. *The Legal Framework Dealing with SOEs' Anti-Competitive Conduct*

The AML aims to achieve a balance between maintaining the dominant status of SOEs in important sectors and subjecting them to antitrust enforcement. Article 7 of the AML states that:

The SOE-controlled sectors concerning the health of national economy and national security and in sectors where state trading is authorized by law, the legal operations of the enterprises are protected by law, yet the government will supervise and regulate the price of the goods and services

¹³ See STATE ASSETS SUPERVISION & MGMT. COMM'N, GUIDANCE ON THE RESTRUCTURING OF STATE CAPITAL AND STATE OWNED ENTERPRISES (2006). See also *SOEs to Maintain Overwhelming Control in Seven Sectors*, XINHUA NET, Dec. 19, 2006.

¹⁴ *Id.*

provided by those enterprises to protect the interests of consumers and promote technology advancement.

The enterprises referenced in the foregoing clause shall conduct businesses in accordance with law, be honest, exercise strict self-discipline, and be subject to the supervision of the public. Those enterprises shall not hurt the interests of consumers by virtue of their dominant status or state trading status.

An important achievement of the AML was the inclusion, in Article 7, of the provision that SOEs are subject to the law and its enforcement, which has already been witnessed in practice.

3. AML's Enforcement against SOEs

According to its official statement, the SAIC has investigated seven cases relating to antitrust violations by SOEs.¹⁵ Among them, six of the decisions are related to abuses of dominant position by the SOEs for an arrangement that imposed unreasonable conditions on equally qualified trading firms. The other case concerns a cartel arrangement that was organized by an SOE to facilitate market division.

From the NDRC's decisions, it also appears that the NDRC does not necessarily grant privileges to SOEs. For instance, in 2013, the NDRC investigated two top state-owned liquor companies, Kweichow Moutai and Wuliangye, for their resale price maintenance arrangements. The two companies were imposed fines of RMB 247 million and RMB 202 million, respectively. In early 2011, the NDRC investigated China Telecom and China Unicom on broadband pricing issues (including differentiated pricing and overpricing). The investigation was closed without any formal decision but with both

¹⁵ See the attached Annex for a brief summary of the decisions by the SAIC (including its provincial counterparts) regarding anticompetitive conduct by SOEs. The summaries are for all cases up to September 12, 2015.

China Telecom and China Unicom subsequently announcing a price decrease for broadband access.

From the publicly available decisions, I notice that, in practice, Article 7 of the AML does not necessarily give an “exemption” to the SOEs in strategically important sectors. On the other hand, I also notice that SOEs have received lighter punishments when compared with the fines imposed on private entities. In view of the available published statistics, the average fine for private undertakings was around 4 to 6% of sales revenue in the previous financial year. Some undertakings even incurred fines of 8 to 10% given the seriousness and duration of their anticompetitive conduct. However, based on the decisions announced by the AMEAs so far, the fines imposed on SOEs range from 1 to 2% of their total revenue.

IV. Judicial Actions against State Restraints

1. *Private Litigation against Administrative Monopolies*

An individual may rely on Article 53 of the AML to bring legal actions against administrative monopolies. However, for MOFCOM’s merger decisions, administrative review is a pre-condition to initiate administrative litigation. For the NDRC or SAIC’s decisions, an individual can either apply for administrative review or directly bring an administrative lawsuit without the need to first proceed with an administrative review.

In 2015, the first private litigation against an administrative monopoly was initiated, *Shenzhen Sware Technology vs. Guangdong Provincial Department of Education*. On February 2, 2015, the Guangzhou Intermediate People’s Court ruled that the Guangdong Provincial Department of Education (“GDOE”) had violated Article 32 of the AML by selecting a company, Glodon Software, as the sole software supplier for a professional skill exam. As a result of the decision to source from a single supplier, other software

suppliers, including the plaintiff, were excluded from the possibility of competing to provide software.

This case, however, is currently under appeal¹⁶ by the GDOE. In the appeal, the GDOE argues that selecting a software vendor for a professional skill exam was not an administrative decision. The GDOE further argues that the decision to select Glodon Software as the sole designated software provider at the annual provincial professional skill exam was not directly issued by it, but by the exam's organizing committee. Therefore, the decision cannot be deemed a department's administrative order and should not be treated as an abuse of an administrative monopoly.

2. *Private Litigation against SOEs*

Article 50 of the AML serves as a general provision that allows a plaintiff to obtain judgment against undertakings that are pursuing anticompetitive practices. The provision provides that, if in committing anticompetitive acts, an undertaking causes a third party to incur losses, the former shall bear civil liability in accordance with the law. A private action against an SOE for a cartel arrangement or an abuse of dominance is covered under this clause and, as such, the action would fall under the scope of civil litigation.

A. *Yunnan Yinding Bio-energy's Accusation of Sinopec for Its Refusal to Deal*

On December 8, 2014, the Kunming Intermediate People's Court decided that Sinopec had abused its dominant market position by refusing to deal with a private company, Yunnan Yinding Bio-energy, which produced biodiesel. Sinopec had refused without any justifiable reasons to incorporate biodiesel that the plaintiff made from waste cooking oil into its distribution system. The diesel distribution system in China is dominated by SOEs (including Sinopec) in accordance with the law.

¹⁶ At the time of writing on September 30, 2015, the case is still in process of being appealed.

The decision, however, was remanded on appeal by the Yunnan High People's Court in September 2015 on the basis that the market definition and the determination of Sinopec's dominant position were not properly established in the first instance at trial. The final result of this case still remains to be seen.

V. Achievements, Limitations, and Outlook

1. Achievements and Limitations

There is no doubt that significant achievements were made by the AML against state restraints. Recent decisions underline the point that the AMEAs have targeted abuses by administrative monopolies as their enforcement priority.¹⁷ In doing that, it appears that there is no privilege given to SOEs compared to other undertakings, including foreign companies.

As for private litigations, although there are few successful cases against administrative monopolies so far, there is an increasing trend that suggests Chinese courts are willing to accept such cases.

There are, however, certain limitations such as the lack of direct power to enforce Chapter V against state restraints. Article 51 merely provides the AMEAs with the power to refer matters so they can be considered by the superior authority of the infringing body. This inherent weakness of the AML makes the AMEAs comparable to a toothless tiger.

Another limitation is that there is a legal barrier that prevents private individuals and enterprises from initiating administrative litigation in China. The previous

¹⁷ The following link contains news reports of such decisions:
http://news.xinhuanet.com/legal/2014-10/23/c_1112939052.htm.

Administrative Litigation Law¹⁸ makes a distinction between “abstract administrative act” and “concrete (individualized) administrative act.” A private individual or entity can only bring to court cases against concrete administrative acts or administrative acts specifically issued against an individual or company. This approach is similar to the EU’s direct effect principle, which enables a private individual or entity to bring a competition law case before a national court. In contrast, administrative litigation against “abstract administrative activity” (i.e., a legislative measure issued by a government agency) was explicitly excluded by the previous Administrative Litigation Law. The abuses of administrative monopolies, in practice, are usually carried out in the form of legislative or other similar measures. If these measures are not concrete or addressed to individuals, under the previous Administrative Litigation Law, no administrative litigation could be successfully initiated. The revised Administrative Litigation Law,¹⁹ however, has removed such limitations. Notwithstanding, whether the revised Administrative Litigation Law will in practice expand the scope of administrative jurisdiction still remains to be seen.

2. Outlook

Administrative monopolies, sectors with SOEs, and certain features of China’s industrial policy continue to obstruct competition in several areas of the economy. The monopolistic and anticompetitive practices arising from these systemic factors limit the effectiveness of the competition policy regime and, in a number of instances, the practices

¹⁸ The Administrative Litigation Law was promulgated by the National People’s Conference on Apr. 4, 1989, and became effective on Oct. 1, 1990. Pursuant to Article 11, only certain kinds of concrete administrative activity could be litigated. The previous practice under the 1989 Administrative Litigation Law was that the People’s Court would not accept litigation related to “abstract administrative activity.”

¹⁹ The Administrative Litigation Law was revised by the National People’s Conference on Nov. 11, 2014, and the revised version took effect on Jan. 1, 2015. In the revised Administrative Litigation Law, the distinction between “abstract administrative activities” and “concrete administrative acts” is no longer referred to. Some scholars comment that the removal of this distinction is intended to remove the previous limitations on administrative litigation, e.g. See [Chen Liping, *Interpretation of the Revised Administrative Litigation Law*, which can be retrieved from \[http://www.cssn.cn/fx/fx_fxxf/201411/t20141105_1390919.shtml\]\(http://www.cssn.cn/fx/fx_fxxf/201411/t20141105_1390919.shtml\).](http://www.cssn.cn/fx/fx_fxxf/201411/t20141105_1390919.shtml)

lie outside the jurisdiction of the AML. Reforms to strengthen competition and to take steps to ease the tensions between competition policy and other features of China's economic system are therefore needed.

To address the issue, during the Third Plenary Session of the 18th Central Committee of the Communist Party of China, decisions were made to proceed with reforms in order to make the market play the decisive role in resource allocation, to establish a “a unified, open, competitive and orderly market system,” to reduce market entry barriers, including the replacement of a positive list of industries where investment is allowed with a negative list of industries where investments are restricted.²⁰ Moreover, China is currently in the process of liberalizing certain sectors (for example the sectors characterized as natural monopolies, such as electricity, telecommunications,²¹ and oil and gas²²). This is part of the initiatives contained in the Opinions on Accelerating Implementation of Innovation-Driven Development Strategy through Strengthening Institutional Reforms (the “Opinions”) released by the Communist Party of China's Central Committee and the State Council in March 2015. To implement the Opinions, the NDRC was entrusted with the task of establishing and enforcing a review mechanism to ensure fair competition across all sectors in the Chinese economy. This review mechanism mainly targets state restraints that must be amended or eliminated. It seems that this proposed mechanism largely resembles the EU's state aid rules,²³ which provide both *ex ante* and *ex post* control over state involvement in economic activity.

²⁰ Communiqué of the Third Plenary Session of the 18th Central Committee of the Communist Party of China, adopted on Nov. 12, 2013, available at http://www.china.org.cn/china/third_plenary_session/2014-01/15/content_31203056.htm.

²¹ China National Radio recently reported that orders were issued to telecommunications operators to stop them from restricting competition in schools and universities following reports that the major carriers were engaging in agreements to geographically divide the market among themselves.

²² It was reported that a proposal to spin off of the national oil and gas pipeline assets in order to set up independent pipeline companies is being discussed by relevant governmental authorities, including the NDRC. The report is available at <http://money.163.com/15/1217/09/BB1BTQN900253B0H.html>.

²³ See Dep't for Bus., Innovation & Skills, *What state aid is and how public authorities can make sure they comply with the rules*, Dec. 12, 2012, <https://www.gov.uk/guidance/state-aid> (“State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could

These reforms, conceived by the highest level of the Chinese government, represent a significant change in the government's thinking about the role of the state and its relationship with the economy. The gradual reduction of state interference in economic activity across most sectors of the economy is most welcomed and in need of further development. Another recommended reform is the establishment of an independent competition agency that is authorized to look into state restraints, and that has the power to directly enforce any necessary correction measures.

potentially distort competition and trade in the European Union. The definition of state aid is very broad because 'an advantage' can take many forms. It is anything which an undertaking (an organisation engaged in economic activity) could not get on the open market.”).

Annex 1

Brief Summary of SAIC Decisions regarding Anti-Competitive Conduct by SOEs

Date	Infringing Entity	SOE Business	Anticompetitive Conduct	Amount of Penalty (RMB)
August 2015	Liaoning Fushun Tobacco Company	The tobacco monopoly in Fushun City	Abuse of dominant position by selling goods through tying arrangements and by imposing other unreasonable trade conditions	1% of sales revenue from the tied products in the preceding year, which amounted to 43,344,980,000
May 2015 (investigation terminated) ¹	China Railcom, China Unicom, and China Telecom	Major state-owned telecommunication service providers	Abuse of dominant position by selling goods through tying arrangements	Required to stop tying
November 2014	Chongqing Gas Group	One of the two state-owned gas service providers in the relevant geographic market	Abuse of dominant position by imposing unreasonable trade conditions	1% of sales revenue from the affected products in the preceding year, which amounted to 1,793,588.55
October 2014	Jiangsu Xuzhou Tobacco Company Pizhou Branch	The tobacco monopoly in Pizhou	Abuse of dominant position by discriminating between companies	1% of sales of revenue from the affected products in the preceding year, which amounted to 1,723,745.04
July 2014	Inner Mongolia Chifeng Tobacco Company	The tobacco monopoly in Chifeng	Abuse of dominant position by selling goods through tying arrangements and by imposing other unreasonable trade conditions	1% of sales revenue from tied products in preceding year, which amounted to 5957,000

¹ During the investigation, China Railcom, China Unicom, and China Telecom made full confessions regarding their anticompetitive conduct and promised to implement corrective measures. As a result, Ning Xia Administration of Industry and Commerce terminated the investigation in accordance with the Provisions of the Industry and Commerce Administration Organs on the Procedures for the Prevention of Administrative Powers Abuse to Exclude or Restrain Competition.

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Date	Infringing Entity	SOE Business	Anticompetitive Conduct	Amount of Penalty (RMB)
January 2014	Guangdong Huizhou Dayawan Yiyuan Water-supply Company	One of the two state-owned service providers of water in the relevant geographic market	Abuse of dominant position by selling goods through tying arrangements	2% of sales revenue from tied goods in preceding year, which amounted to 2,363,597.45
July 2013	Jiangxi Taihe LPG Stored and Delivered Station	Gas monopoly in Taihe	Anticompetitive agreement to divide the market	Confiscated illegal gains of 205,537 and fined 130,230

The summaries are for all cases up to September 12, 2015.