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China Antitrust Review 2017

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Last year saw a high level of enforcement activity under China's Anti-Monopoly Law ("**AML**"), which will mark its tenth anniversary in 2018. As discussed in our review, the year was notable on several fronts, with heightened levels of enforcement activity, particularly in mergers, enforcement across an expanded range of industries, and use of unusual remedies that continue to depart from the approaches taken by Western antitrust authorities.

China's Ministry of Commerce ("**MOFCOM**"), the country's merger control authority, issued a number of important merger decisions in 2017, imposing conditions on seven transactions, compared to only two in 2016. Meanwhile, the National Development and Reform Commission ("**NDRC**"), China's antitrust agency for price-related conduct, continued enforcement efforts in the medical industry and expanded its focus to include electric power firms, polyvinyl chloride ("PVC") manufacturers, coal traders and producers, and ports.

The key takeaway is that while China's antitrust agencies are ramping up activity and focusing more on the domestic market, they continue to approach antitrust enforcement in ways that often put them at odds with their Western counterparts. For example, MOFCOM coordinated its merger reviews with other jurisdictions in some deals, but MOFCOM has also demonstrated a willingness to depart from the U.S. and the EU in imposing remedies, including by requiring favorable price commitments for Chinese customers. More generally, as U.S. antitrust enforcers become more averse to behavioral remedies, Chinese antitrust enforcers continue to embrace them. In addition, some have questioned whether political tensions between China and a foreign company's home jurisdiction could potentially contribute to delays or more onerous remedies in antitrust actions.

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