

China Antitrust Review 2014

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This year marked the sixth anniversary of China's Anti-Monopoly Law ("AML") and a year of significant developments for antitrust enforcement in China.

China has three separate antitrust regulators: (i) the Ministry of Commerce ("MOFCOM") is responsible for reviewing merger control cases; (ii) the National Development and Reform Commission ("NDRC") is responsible for price-related conduct; and (iii) the State Administration for Industry and Commerce ("SAIC") is responsible for non-price related conduct.

In 2014, MOFCOM took enforcement action against five proposed transactions, including one which it prohibited (the P3 shipping joint venture), marking only the second time in the AML's history that MOFCOM has barred a transaction outright. Beyond merger enforcement, the two other state authorities, the National Development and Reform Commission ("NDRC") and the State Administration for Industry and Commerce ("SAIC"), intensified their enforcement efforts in 2014. Some of these initiatives have been criticized at the highest levels of the U.S. government.

Private antitrust litigation takes place in China, both explicitly under the AML and more generally within its civil law. In 2014, China's Supreme Court ruled on its first antitrust case since the inception of the AML, affirming the dismissal of a tying case.

These developments should be considered carefully by companies doing business in China or contemplating transactions that require clearance pursuant to the AML.

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