



# Brief Introduction to China Antitrust Regime

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# KEY CHINESE COMPETITION AGENCIES AND THEIR MANDATES

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## Anti-Monopoly Commission of State Council

Research and draft relevant regulations; launch investigations and assessments on market competition status and release relevant reports; draft and release guidelines; coordinate administrative enforcement of AML, etc.

**NDRC-National Development and Reform Commission: *Department of Pricing Supervision***

Investigate and penalize price related monopoly conducts.

**SAIC- State Administration for Industry and Commerce: *Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau***

Investigate and penalize monopoly conducts not related to price and administrative monopoly.

**MOFCOM-Ministry of Commerce: *Anti-Monopoly Bureau***

Review and approve concentration of undertakings.

## UPDATE FOR MOFCOM

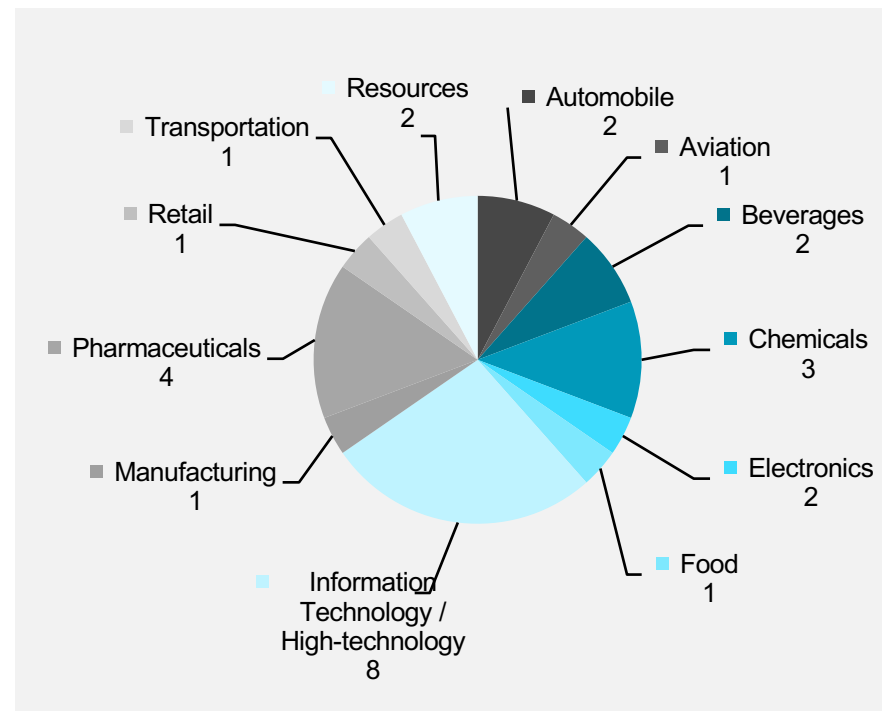
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- The number of transactions for merger clearance has been significantly increased with focus on manufacturing, e – commerce and entertainment industry. MOFCOM has been more efficient and has greatly shortened the time for case review.
- MOFCOM seems to pick up their pace in conditional approvals. Compared to the only two conditional clearance in 2016, there have been two conditional clearance with more down the road.
- MOFCOM has been going after and investigating the failure-to-notify deals (has issued nine decisions in 2017 as of today).

# TRACK RECORD - MOFCOM

	Approved		Blocked	Total
	Unconditional	Conditional		
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	312	2	0	314
<b>Total</b>	<b>1282</b>	<b>26</b>	<b>2</b>	<b>1310</b>

MOFCOM's interventions, by sector



## UPDATE FOR NDRC

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- NDRC's enforcement efforts appear to have centered on alleged price-fixing, joint boycotts, and market allocation by pharmaceutical companies and vertical pricing arrangements by medical device companies.
- NDRC has outlined its antitrust enforcement priorities for 2016, targeting sectors ranging from auto, shipping, industrial materials, to pharmaceuticals, medical devices, intellectual property rights, telecoms, and finance.
- NDRC regional arms are playing more important roles in antitrust investigations.

## TRACK RECORD - NDRC

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- On 4 March 2016, NDRC reported that it had investigated a total of 97 cases between 2011-2015, including
  - ✓ 76 cases on monopoly agreement
  - ✓ 13 cases on abuse of dominance, and
  - ✓ 8 cases on administrative monopoly
- The total fines reached RMB10.4 billion

## UPDATE FOR SAIC

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- SAIC's enforcement priorities are reported to be electricity, gas, water and cable TV.
- SAIC has accepted 82 cases since AML came in effect, with 50 concluded so far. Among the cases, 40 involved monopolistic agreements, the remaining 42 involved abuses of market dominance. The five-year-long investigation of Tetra Pak was concluded as latter.

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## SHARING ECONOMY CASE IN CHINA – DIDI & UBER

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- Didi's takeover of Uber China was completed last year without seeking MOFCOM's approval.
  - ✓ Both of Uber China and Didi were not profitable when they started the merger, they claimed their turnovers in 2015 didn't meet the 400 million CNY threshold to trigger a PRC filing.
  - ✓ However, Didi allegedly accounts for more than 80% market share in China and Uber China is the 2<sup>nd</sup> largest player in the ride-hailing/sharing business, this merger has drawn strong challenges from the public.

## SHARING ECONOMY CASE IN CHINA – DIDI & UBER

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- Due to the continuous challenges from the public about the anticompetitive effects of this merger, MOFCOM announced their investigation into the merger in this July.
  - ✓ The controversy lies in how to define the revenue for sharing-economy business platform.
- MOFCOM now is looking to thoroughly assess the impact of the transaction on market competition.
  - ✓ It plans to examine the sector's competition features and the modes of operation by conducting seminars and field investigations as well as studying economic analyses carried out by third parties.