ANTI-TRUST INVESTIGATIONS IN CHINA: OVERVIEW

This note reviews anti-trust enforcement regime in China. It gives an overview on the types of conduct subject to anti-trust scrutiny in this region, including a summary of noteworthy cases. The note explains the procedures on conducting anti-trust investigations in China, with a flowchart to illustrate a typical investigation process.

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SCOPE OF THIS NOTE

The ***Anti-monopoly Law 2007*** (2007 AML) came into effect in August 2008. Since then, China (PRC) has quickly established itself as one of the world's major competition regimes. The past 11 years have seen a rapid increase in investigations for the anti-competitive conduct by the enforcement authorities, which reflects a more proactive attitude toward anti-trust enforcement.

This note reviews the legal framework for anti-trust investigations in China and where possible, discusses facts relating to the cases that are publicly available to assist in illustrating how the anti-trust investigations are conducted in this region.

ENFORCEMENT AUTHORITIES

The Anti-Monopoly Commission (AMC) under the State Council is responsible for developing competition policy, conducting market studies, publishing guidelines and co-ordinating the competition enforcement work.

Since April 2018, the State Administration for Market Regulation (SAMR) has consolidated the anti-trust functions of the former three anti-trust authorities in China, namely the Ministry of Commerce (MOFCOM), the National Development and Reform Commission (NDRC) and the disbanded State Administration for Industry and Commerce (SAIC), following which the Anti-Monopoly Bureau (AMB) under the SAMR became responsible for the enforcement of the rules against anti-competitive conduct under the ***2007 AML*** in lieu of the SAIC and NDRC.

Prior to the agency consolidation, the NDRC was in charge of enforcing price-related anti-competitive conduct while the SAIC was in charge of enforcing the non-price-related anti-competitive conduct. (For detailed coverage of the 2018 reform, see ***Practice note, Understanding the 2018 government institutional reform: China: Single anti-trust regulator.***)

On 3 January 2019, the SAMR published the *Notice on the Authorisation of Anti-trust Law Enforcement* (关于反垄断执法授权的通知) (2018 Authorisation Notice) dated on 28 December 2018, authorising its local counterparts to conduct the anti-trust enforcement work within their administrative areas. The notice marks a significant step by the SAMR in the process of integrating anti-trust enforcement resources in China. The notice clarified the jurisdictions of the SAMR and its local counterparts and touched upon the co-operation mechanisms among different levels of agencies. This approach for jurisdictional authorisation and co-operation between central and local SAMR offices has been echoed in the SAMR's unified implementing rules effective from 1 September 2019 (see ***SAMR implementing rules***).

For the purpose of this note, the SAMR, the former enforcement authorities (that is, the NDRC and SAIC) and their respective local counterparts are together referred to as the Enforcement Authorities, and each an Enforcement Authority.

IMPLEMENTING RULES

Aside from the ***2007 AML***, several regulations and guidelines govern the enforcement of the rules against anti-competitive conduct, including implementing rules issued prior to the 2018 agency consolidation, which are and will be effective until repealed and replaced by new rules formulated by the SAMR (an on-going normative project that the SAMR is intensively working on following the consolidation).

SAMR implementing rules

Due to the previous allocation of anti-trust enforcement powers between the NDRC and SAIC, there had been considerable overlap (and certain inconsistency) between the implementing rules issued by the NDRC and SAIC respectively.

In response to the call for unified anti-trust enforcement rules, on 1 July 2019, the SAMR released the following set of implementing provisions, each taking effect from 1 September 2019 to replace the disbanded SAIC's three substantive regulations (promulgated in 2010) and two procedural regulations (promulgated in 2009) on abuse of dominance, monopoly agreements and abuse of administrative powers:

- *Interim Provisions on Prohibiting Abuses of Dominant Market Positions 2019* (禁止滥用市场支配地位行为暂行规定) (2019 Abuses of Dominance Provisions), which:
  - provide detailed guidance on what constitutes a dominant position, with particular recognition of dominance in internet related markets and intellectual property; and
  - for each type of abusive conduct under Article 17 of the ***2007 AML***, provides guidance on the specific factors to be considered when identifying an abuse, with a particular focus on what constitutes reasonable grounds that can justify potentially abusive conduct and how to analyse certain types of abuse such as excessive or predatory prices.
- *Interim Provisions on Prohibiting Monopoly Agreements 2019* (禁止垄断协议暂行规定) (2019 Monopoly Agreement Provisions), which:
  - provide detailed guidance on the specific forms of each type of monopoly agreements explicitly prohibited under Articles 13 and 14 of the 2007 AML, as well as on the specific factors that need to be taken into account when identifying "other types of monopoly agreements" within the meaning of the catch-all clauses under Articles 13 and 14 of the 2007 AML;
  - clarify that investigations regarding horizontal monopoly agreements relating to fixing price, restricting output or allocating market must not be suspended;
  - provide specific guidance on the factors to be considered in applying the legal exemption under Article 15 of the 2007 AML; and
  - set out detailed rules on leniency procedure, pursuant to which the first, second and third leniency applicants (that offer crucial evidence) are entitled to a fine reduction of 80-100%, 30-50% and 20-30%, respectively.

  Another noteworthy aspect is that the safe harbour clause (exempting certain agreements below a market share threshold) which appeared the consultation draft is not retained in the final version.

- *Interim Provisions to Prevent Abuses of Administrative Powers to Exclude or Restrain Competition 2019* (制止滥用行政权力排除、限制竞争行为暂行规定) (2019 Abuses of Administrative Powers Provisions), which provide:
  - further clarifications on Articles 32-37 of the 2007 AML to facilitate the identification of abuses; and
  - detailed procedural guidance on complaints, complaint verification, investigation, and so on.

While the SAMR continues to flesh out details of the anti-trust enforcement merger, other anti-trust enforcement regulations previously issued by the SAIC are likely to remain in effect within their respective jurisdiction until further notice (for example, the ***Provisions on Prohibiting the Abuse of Intellectual Property Rights to Exclude and Restrain Competition 2015*** (2015 SAIC Provisions on Abuse of IPR)).

For the two major anti-trust implementing rules previously enforced by the NDRC (namely, the ***Provisions on Anti-Price Monopoly 2010*** and the ***Regulations on Procedures for Enforcement of Administrative Law on Anti-Price Monopoly 2010***), the SAMR does not have the authority to repeal them in its departmental rules. As the NDRC is no longer responsible for anti-trust enforcement, the two NDRC rules in fact no longer have any room to apply. At some point in the future, the NDRC may issue a NDRC decision or announcement to repeal a group of rules that are no longer applicable (including the NDRC anti-trust rules) just like what MOFCOM did in the past.

AMC implementing guidelines

The AMC has approved four anti-trust guidelines involving IPRs, auto industry, leniency, and commitments respectively, which will soon be published.

In the meantime, the AMC is in the process of drafting guidelines relating to exemptions, which are expected to be approved by the AMC soon. The other guidelines relating to penalties, however, are reportedly to be delayed due to certain controversies.

See ***Practice note, Chinese competition law: overview: Six draft implementing guidelines and others*** for detailed coverage.

Other related laws

Note that besides the ***2007 AML***, the Price Supervision and Anti-Unfair Competition Bureau under the SAMR also implements the ***Pricing Law 1997*** (1997 Price Law) and the ***Anti-unfair Competition Law 2019***. Anti-trust investigations may be initiated based on the evidence detected during the process of investigations initiated under these legislation (such as the commercial bribery investigations). For more information on bribery and corruption investigations in China, see:

- ***Article, Working with investigators in China: A guide for legal counsel.***
- ***Practice note, Investigating corrupt behaviour: China and Hong Kong.***
- ***Practice note, What to do during a SAMR or Ministry of Public Security dawn raid.***

WHAT MAY BE INVESTIGATED?

Monopoly agreements

According to Article 13 of the ***2007 AML***, monopoly agreements are defined as agreements, decisions or other concerted practices that eliminate or restrict competition. Articles 13 and 14 of the 2007 AML provide a list of monopoly agreements that are presumed to be anti-competitive, including agreements:

- Fixing or changing prices.
- Limiting production or sales volumes.
- Dividing sales or procurement markets.
- Restricting the purchase of new technology or new products.
- Jointly boycotting transactions.
- Maintaining resale prices.

Article 15 of the 2007 AML allows undertakings to rebut the anti-competitive presumption under Articles 13 and 14. To benefit from Article 15, the undertakings concerned must meet all of the following conditions:

- **Qualifying purposes.** The agreement concerned must have a qualifying purpose, such as to:
  - update technology, research and develop products;

  - improve product quality, reduce cost, improve efficiency and implement standardisation;
  - enhance the competitiveness of small and medium-sized enterprises;
  - protect public interests;
  - mitigate economic recession; or
  - protect legitimate interests in international trade and foreign economic co-operation.
- **No elimination of competition.** The agreement must not substantially restrict competition in the relevant market.
- **Pass-on to consumers**. Consumers will receive a fair share of the resulting benefits.

To date, many undertakings have been investigated by the Enforcement Authorities for their cartel or resale price maintenance (RPM) conduct. However, there is no public record that a monopoly agreement has been successfully benefitted from Article 15. Noteworthy cases include:

- **LCD panel (cartel).** In January 2013, the NDRC announced that it investigated six Korean and Taiwanese LCD panel manufacturers (Samsung, LG, AU Optronics, Chunghwa Pictures Tubes, Chimei InnoLux and HannStar Display) for exchanging detailed market data and fixing prices for LCD panels in China. The NDRC imposed a total fine of RMB144 million (approximately US$22.9 million) on the companies, with the highest individual fines imposed on LG, Chimei InnoLux and Samsung. The NDRC also ordered the companies to return overpayment of RMB172 million (approximately US$27.4 million) to Chinese colour TV manufacturers that purchased the LCD panels and confiscated illegal gains of RMB36.75 million (approximately US$5.9 million), bringing total economic sanctions imposed to RMB353 million (approximately US$56.2 million). In addition to the economic sanctions, the companies also made several behavioural commitments. This was the NDRC's first crackdown against an international price-fixing cartel and was based on the provisions of the ***1997 Price Law***.
- **Premium Liquor (RPM).** In February 2013, Guizhou DRC imposed a fine of RMB247 million (approximately US$39.3 million) on Kweichou Moutai and Sichuan DRC imposed a fine of RMB202 million (approximately US$32.1 million) on Wuliangye Group for RPM. Both Kweichou Moutai and Wuliangye Group are Chinese state-owned manufacturers of premium liquor.
- **Infant formula (RPM).** In August 2013, the NDRC announced that it imposed a total fine of RMB668.73 million (approximately US$108.3 million) on six infant formula manufacturers (Biostime, Mead Johnson, Dumex, Abbott, FrieslandCampina and Fonterra) for RPM. Fines ranged between 3-6% of the companies' sales in the previous year. Companies also announced "rectification measures" to address the perceived anti-competitive effects of the RPM agreements, including price reductions amending distribution agreements and reforming sales models. Three manufacturers (Wyeth, Beingmate and Meiji Dairies) were exempt from fines.
- **Automobiles (RPM).** In August 2014, the NDRC announced investigations against Chrysler, Audi and Mercedes-Benz for RPM and related conduct. In September 2014, Shanghai DRC imposed a fine of RMB31.7 million (approximately US$5.2 million) on Chrysler, and Hubei DRC imposed a fine of RMB248 million (approximately US$40.3 million) on Audi. In April 2015, Jiangsu DRC imposed a fine of RMB350 million (approximately US$57.3 million) on Mercedes-Benz. In September 2015, Guangdong DRC imposed a fine of RMB123.3 million (approximately US$19.3 million) on Dongfeng-Nissan for RPM. Seventeen Dongfeng-Nissan distributors involved were reported to have also been fined an aggregate of RMB19.12 million (approximately US$3 million).
- **Auto parts (cartel).** In August 2014, the NDRC announced that it had fined ten Japanese auto parts manufacturers (Denso, Furukawa Electric, Yazaki, Sumitomo, Asian Industry, Mitsuba, Mitsubishi Electric, NSK, NTN and JTEKT) a total fine of RMB1.24 billion (approximately US$201.4 million) for colluding to set the prices of auto parts and bearings. Fines ranged between 4-8% of the companies' sales in the previous year. Two other Japanese manufacturers (Hitachi and Nachi-Fujikoshi) were exempted from fines.
- **Roll-on/roll-off (Ro/Ro) shipping (cartel).** In December 2015, the NDRC announced that it had fined eight roll-on/roll-off (Ro/Ro) shipping companies (Japan's Nippon Yusen KK, Mitsui OSK lines, Kawasaki Kisen Kaisha and Eastern Car Liner, Korea's Eukor Car Carriers, Norway's Wallenius Wilhelmsen Logistics, Chile's CSAV and CCNI) a total fine of RMB407 million (approximately US$63 million) for entering into and implementing price monopoly agreements. Fines ranged between 4-9% of the companies' sales in the previous year in their respective international shipping sales "concerning transport to and from China". The investigation lasted for more than one year. Japan's Nippon Yusen KK was exempted from fines. The Norway-based Höegh Autoliners was able to defend itself and escaped sanction based on a large amount of evidence.
- **Allopurinol tablets (cartel).** On 15 January 2016, the NDRC fined three allopurinol tablet manufacturers and their exclusive distributors for engaging in cartel conduct in breach of the 2007 AML. The NDRC noted that

since 2014, only three manufacturers, that is, Chongqing Qingyang Pharmaceutical (and its affiliate company Chongqing Datong), Jiangsu Tianjie and Shanghai Sine Pharmaceutical, have been active in the allopurinol tablet market. From April 2014 to September 2015, the parties held four meetings and agreed to jointly increase the price of allopurinol tablets. They also allocated provinces to each other and agreed to submit tenders only in their allocated provinces. The NDRC imposed a total fine of RMB1,805,200 (approximately US$275,027.8) on Chongqing Qingyang/Chongqing Datong, equating to 8% of the company's relevant sales. The NDRC took into account the factors that Chongqing Qingyang was the leader in the cartel and did not cooperate during the initial phases of the investigation. The other companies were each fined 5% of the company's relevant sales and their co-operation with the investigation was noted.

- **Estazolam API and tablets (cartel).** On 22 July 2016, the NDRC published its decisions against three local drug makers Huazhong Pharmaceutical, Shandong Xinyi Pharmaceutical and Changzhou Siyao Pharmacy for engaging in cartel conduct. The case concerned an agreement between the only three producers of estazolam API not to supply other manufacturers of tablet form estazolam and to increase the price of the tablets they themselves sold. In this case, the NDRC seems to concede there was no agreement as to increasing prices, but that one company signalled an appropriate price point and others followed. This is the first case in China in which the "agreement" is described more in terms of a "concerted practice". The NDRC imposed a total fine of RMB2.6 million (approximately US$0.39 million) on the three companies, of which nearly RMB1.6 million (approximately US$0.24 million) was imposed on the ringleader, Huazhong Pharmaceutical, equating to 7% of its estazolam tablet sales in 2015.
- **Medtronic (RPM).** On 7 December 2016, the NDRC fined Medtronic (Shanghai) Management in the amount of RMB118.6 million (approximately US$17.2 million) for entering into and implementing RPM agreements for medical equipment supplies used in the treatment of cardiovascular diseases, restorative therapies and diabetes. The fine amounted to 4% of Medtronic's 2015 sales of the relevant products in China. The NDRC found that Medtronic had infringed Articles 14(1) and 14(2) of the 2007 AML which respectively prohibit vertical agreements to fix resale prices and imposing minimum resale prices. Specifically, the NDRC found that Medtronic had: directly fixed resale prices by sending price lists with fixed resale prices to distributors; indirectly fixed resale prices by fixing e-commerce platform distributors' gross profit margins; fixed minimum bidding prices; and fixed minimum resale prices for sales to hospitals. Medtronic was found to have implemented the agreements by establishing an internal evaluation system and refusing to supply products to distributors that won bids by quoting low prices. In addition, Medtronic sought to strengthen the impact of the RPM by prohibiting cross-regional sales and preventing distributors from selling competing products. It is worth noting that the NDRC's assessment of restrictions on cross-regional sales and non-compete obligations was in the context of RPM (as specific measures which further strengthened the effect of the RPM). The NDRC did not provide an express view on whether the restrictions on cross-regional sales or non-compete obligations in themselves are unlawful.
- **GM/SAIC Motor Corp joint venture (RPM).** On 23 December 2016, the Shanghai Price Bureau, the local counterpart of NDRC in Shanghai, fined General Motors' joint venture with SAIC Motor Corp in China, SAIC-GM, RMB201 million (approximately US$28.9 million) for RPM. Specifically, it found that SAIC-GM had infringed Article 14 of the 2007 AML by setting minimum resale prices for Cadillac, Chevrolet and Buick cars. The fine amounted to 4% of SAIC-GM's 2015 turnover, which was the same percentage fine imposed on Medtronic for RPM infringements.
- **23 power generation companies in Shanxi (cartel).** On 3 August 2017, Shanxi DRC announced its fines on 23 power generation companies in Shanxi Province and Shanxi Electric Power Association for reaching and implementing price-fixing agreement. The 23 power generation companies were found to have attended a meeting organized by the Shanxi Electric Power Association in 2016, where the companies agreed on a minimum price for electricity and a maximum level for discounts. The Shanxi DRC imposed a total fine of RMB72.88 million (approximately US$10.84 million) on the 23 companies and a fine of RMB500,000 (approximately US$74,393) on the power association, representing the maximum fine that can be imposed on trade associations under the 2007 AML. Fines on the companies accounted for 1% of their relevant sales in the previous year.
- **18 PVC manufacturers (cartel).** On 27 September 2017, the NDRC published its decisions on 18 polyvinyl chloride (PVC) manufacturers for reaching and implementing price-fixing agreements. The 18 companies were found to have formed the "North-western Chlor-Alkali Union" and held six meetings to discuss market conditions and exchange output and sales information. They entered into 13 price-fixing agreements through WeChat group discussions, which resulted in the increase of PVC prices. The total fine imposed on the 18 companies amounted to RMB457 million (approximately US$69 million), equating to 1% to 2% of their respective turnover in 2016.
- **One of the main distributors of Vivo (RPM).** In March 2018, Jiangsu Price Bureau, the local counterpart of the NDRC in Jiangsu, published its fine on one of the main distributors of Vivo (a top Chinese start phone

manufacturer) in the amount of RMB6.98 million (approximately US$1.1 million) for alleged RPM. The agency reportedly commenced the investigation following a complaint about the price restrictions on wholesalers imposed by the Vivo distributor. The fine was equivalent to 1% of the distributor's total revenue in 2016. Notably, this is China's first price-related anti-monopoly case in the smart-phone sector.

- **Four tugboat companies in Shenzhen (cartel).** On 11 June 2018, the SAMR imposed a total fine of RMB12.86 million (approximately US$2 million) on four Shenzhen tugboat companies for price-fixing. The SAMR found that, since 2010 or potentially even earlier, the four companies held meetings to maintain general pricing patterns and to follow a consistent negotiation strategy with other competitors. The four tugboat companies, Yantian Tugboat, Alliance Tugboat, Chiwan Tugboat, and Dachan Bay Tugboat were each imposed a fine equivalent to 4% of their revenues in the relevant year.
- **Two natural gas subsidiaries of PetroChina (RPM).** On 27 July 2018, the SAMR announced an aggregate fine of RMB84.06 million (approximately US$12.37 million) imposed by the NDRC on two natural gas subsidiaries of PetroChina for RPM. The NDRC found that the two state-owned natural gas subsidiaries of PetroChina Group, together set the minimum resale price for compressed natural gas (CNG) sold to downstream CNG companies in Heilongjiang Province from 1 September 2016 onwards. The large fine accounted for 6% of the two subsidiaries' natural gas revenues in 2016. The penalties demonstrate that state-owned entities are also subject to anti-trust enforcement in China.
- **Three acetic acid API manufacturers (cartel).** On 5 December 2018, the SAMR imposed an aggregate fine of RMB6,251,600 (approximately US$907,450) on three acetic acid API manufacturers, namely Chengdu Huayi, Sichuan Jinshan, and Taishan Xinning, for price-fixing. Acetic acid is an essential input for hemodialysis concentrates, which are used to treat kidney failure and uraemia. The concerned companies are the only three manufacturers in the Chinese acetic acid market. The SAMR found that from October 2017 to February 2018, the companies exchanged competitively sensitive information over an industry conference and other meetings. In addition, they also indirectly exchanged information via Jiangxi Jinhan, whose role was not published. Following the information exchange, the three companies reached an agreement to increase the sales price of acetic acid API to both haemodialysis solution plants and drug manufacturers by approximately 201-255%. The fines imposed accounted for an aggregate of 4% of each infringing company's revenue in 2017. Apart from fines, the SAMR also confiscated illegal gains of RMB6,582,200 (US$955,438).
- **Eight concrete firms (cartel).** On 8 May 2019, Zhejiang AMR imposed a cumulative fine of RMB7,708,477 (US$1.12 million) on eight concrete firms in Quzhou for market sharing and output restriction. Following an in-depth probe which commenced in December 2018, Zhejiang AMR found that in May 2018, the eight firms had entered into a market allocation agreement based on market share quotas for each participant. To ensure that the agreement was effectively implemented, the eight firms agreed to meet on a monthly basis to exchange information, and put in place a mechanism of guarantee deposits and incentive and penalty polices. Monthly meetings were held in June, July and August 2018 to monitor compliance with the agreement and to determine penalties for non-compliance. Zhejiang AMR concluded that such conduct constituted a horizontal monopoly agreement through sharing markets and restricting output, and therefore infringed Article 13 of the 2007 AML.
- **Chang'an Ford (RPM).** On 5 June 2019, the SAMR announced that a fine of RMB162.8 million (US$23.56 million) had been imposed on Chang'an Ford Automobile Co., Ltd. (Chang'an Ford, a JV between Chang'an Automobile and Ford) for RPM. According to the announcement, the SAMR found that Chang'an Ford had been seeking to impose minimum resale prices on its dealers in Chongqing since 2013 by implementing price lists, entering into "price self-discipline" agreements, and fixing the dealers' minimum prices both at automobile exhibitions and on online platforms. Such conduct was considered to have harmed inter-brand and intra-brand competition. The SAMR concluded that the conduct of Chang'an Ford infringed Article 14 of the 2007 AML and imposed a fine equivalent to 4% of Chang'an Ford's sales in Chongqing in the preceding year.

According to the official press release, as of October 2018, during the period of ten-year enforcement of the 2007 AML, the Enforcement Authorities investigated and concluded 165 cases involving monopoly agreements.

Abuse of dominance

Under Article 17 of the ***2007 AML***, dominance is defined as a market position where an undertaking has the ability to control price, quantity and other trading terms, or to restrict or foreclose market entry. The assessment of dominance depends on several factors, including the:

- Undertaking's market share and the competitiveness of the relevant market.
- Ability of the undertaking to control the sales or input market.
- Financial strength and technical resources of the undertaking.

- Extent to which other undertakings rely on the undertaking concerned.
- Ease of market entry.

Dominance is presumed where an undertaking has a market share of 50%, and where two undertakings together hold two-thirds of the market, or three undertakings together hold three-quarters of the market. Presumptions of dominance can be rebutted by evidence to the contrary. In addition, an exception is available where the dominance is presumed on the basis of the combined market share of two or three undertakings: if any undertaking has a market share of less than 10%, it will not be presumed to be dominant.

The 2007 AML and the implementing rules set out a non-exhaustive list of the types of conduct that would be considered abusive without justification. These can be categorized broadly into:

- **Exploitative abuses.** The dominant undertaking abuses its position by selling at unfairly high prices or buying at unfairly low prices.
- **Exclusionary abuses.** The dominant undertaking abuses its position by selling below cost, refusing to trade, requiring exclusivity, implementing tie-in sales or imposing other discriminatory or unreasonable conditions.

The application of competition law in the area of abuse of IPR has been a focus of enforcement in China. The AMC has been proactively developing guidelines on the assessment of abuse of IPRs under the 2007 AML.

On 23 March 2017, the AMC issued the Anti-Monopoly Guidelines on the Abuse of IPR (Draft for Public Comment) (关于滥用知识产权的反垄断指南（征求意见稿）) for public comment. It was reported that the guidelines have been approved and will soon be published.

On 1 August 2015, the ***2015 SAIC Provisions on Abuse of IPR*** came into effect. Although this legislation only applied to the investigations initiated by the SAIC (and its successor agency, the SAMR), it has provided valuable guidance as to how the 2007 AML could be applied to the misuse of IPRs. Notably, this legislation made it clear that the undertaking should not be presumed to have a dominant market position in the relevant market solely based on the fact that it owns the IPR. It also required that certain holders of IPR license their technology where the IPR is a standard essential patent (SEP) or essential facility. However, prior to the agency consolidation, the SAIC had not issued any decision based on this legislation. The NDRC initiated several investigations into the licensing practices of patent holders such as InterDigital Corporation and Qualcomm.

To date, several undertakings have been investigated or penalised by the Enforcement Authorities for their abusive conduct. Noteworthy cases include:

- **InterDigital Corporation.** In June 2013, the NDRC initiated an investigation against InterDigital Corporation for the alleged abuse of its dominant position by charging excessive prices, bundling patent licenses and imposing unreasonable conditions. In May 2014, InterDigital Corporation agreed to abide by certain commitments and the NDRC suspended the investigation.
- **Qualcomm.** In November 2013, the NDRC launched an investigation against Qualcomm for the alleged abuse of its dominant position in certain 3G and 4G technology and chip markets by charging excessive prices, bundling patent licenses and imposing unreasonable conditions. In February 2015, the NDRC imposed a fine of RMB6.088 billion (approximately US$993.2 million) on Qualcomm, the largest fine imposed by the NDRC since the 2007 AML came into force. The NDRC's decision also required changes to the business practices that Qualcomm has followed for more than 20 years, albeit less significantly than had been suggested in the earlier stages of the NDRC's investigation.
- **Shankai Sports International.** In June 2014, Beijing AIC announced that it had launched an investigation against Shankai Sports International, the authorized vendor of package tours to the 2014 FIFA World Cup in Brazil for China, for bundling various products and services, such as tickets and accommodation. Beijing AIC suspended the investigation in June 2014, stating that Shankai had admitted that its conduct violated the 2007 AML and had taken measures to address the concerns.
- **Microsoft.** In July 2014, the SAIC announced that it has launched an investigation and dawn raided Microsoft for the alleged abuse of dominance regarding interoperability and other competition concerns related to the Windows operating system and Office software. It is reported that around 100 officials across several locations are involved in this case. The investigation is currently ongoing under the SAMR.
- **Chongqing Qingyang Pharmaceutical.** In October 2015, Chongqing AIC fined RMB439,308 (approximately US$69,143) on Chongqing Qingyang Pharmaceutical (Qingyang) for the alleged abuse of dominance regarding refusal to deal. Qingyang took the initiative to contact the Chongqing AIC for consultation on its potential violation of the 2007 AML. The fine imposed equalled 3% of Qingyang's turnover in the previous year. Mitigating factors were considered; Qingyang was very co-operative during the investigation and resumed

supply in time. This is likely the first successful refusal-to-deal case in China, before which several cases had come to court but the plaintiff invoking the refusal-to-deal provision in the 2007 AML lost.

- **Chifeng Salt Industry Company.** On 29 September 2016, the Inner Mongolia AIC fined Chifeng Salt Industry Company for abuse of dominance. The company was the only wholesaler licensed by the Chifeng local government to purchase edible salt from manufacturers as well as sell edible salt to retailers in Chifeng. As a result, it had a statutory monopoly for the edible salt market in Chifeng. The AIC found that the company provided different types of edible salt products to different retailers within Chifeng depending on the retailers' location. Therefore, the AIC found the company's conduct amounted to abuse of dominance through discriminatory treatment between different retailers, including refusal to deal. The Inner Mongolia AIC confiscated illegal gains of RMB1,940,544 (approximately US$290,936) from the company and imposed a fine of RMB1,047,814 (approximately US$157,093), 2% of the company's annual sales in 2013.
- **Tetra Pak.** On 16 November 2016, the SAIC announced a fine of RMB667.7 million (US$97.3 million) against Tetra Pak for the alleged abuse of dominance. This is the largest ever fine that the SAIC had imposed in an anti-trust case. The fine amounted to 7% of Tetra Pak's sales revenue from the relevant products in 2011 (the year preceding initiation of the formal investigation). SAIC found that Tetra Pak had engaged in a number of forms of abusive conducts, including exclusive dealing, tying and loyalty rebates. It is worth noting that it was the first time that SAIC referred to the "catch-all" clause under Article 17 of the 2007 AML in analysing loyalty rebates. The analysis on retroactively cumulative rebates and target rebates generally mirrored international practice and indicated the Enforcement Authority's willingness to touch upon controversial and complicated anti-trust issues.
- **Hubei Yinxingtuo Port.** It was published on 8 February 2018 that Hubei AIC imposed a fine of RMB977,400 (approximately US$155,582) on Hubei Yinxingtuo Port (HY Port) for abuse of dominance. HY Port was found to have treated roll-on/roll-off (RORO) shipping transport companies in a discriminatory way by favouring a related entity, Yichang H Transport. The relevant market was defined as RORO shipping port service for cargo vehicles along Yiyu Route (upbound, or from Yichang to Chongqing) along the Sichuan River. HY Port was found to hold a dominant position in the relevant market as it is the only service provider. The fine imposed by Hubei AIC equalled 6% of HY Port's total revenues in 2016.
- **Two API suppliers.** On 18 January 2019, the SAMR published its penalty decision against two chlorpheniramine maleate (CM) active pharmaceutical ingredients (APIs) suppliers Hunan Er-Kang (Er-Kang) and Henan Jiushi (Jiushi) for abuse of dominance, imposing a total fine of RMB10.04 million (US$1.48 million). CM is an API used to produce a wide range of commonly used cold and anti-allergy medicines. Er-Kang is the sole authorized agent to import CM into China and Jiushi is the largest manufacturer of CM in China. The SAMR opened its investigation in July 2018 and found the two companies were collectively dominant in the market for CM APIs in China. With respect to specific conduct, the SAMR found that the two suppliers had abused their collective dominance through excessive pricing, refusal to supply and tying. The abusive conduct was found to have significantly distorted competition in the CM APIs' downstream drug manufacturing markets and have harmed the interests of end-consumers. Consequently, the SAMR imposed fines of RMB8.48 million (US$1.25 million) and RMB1.56 million (US$0.23 million) on Er-Kang and Jiushi, respectively, accounting for 8% and 4% of their revenues in 2017. In addition to the fines, the SAMR recovered illegal gains of RMB2.39 million (US$0.35 million) from Er-Kang due to its leading role in the collective abusive conduct.
- **Eastman.** On 16 April 2019, Shanghai AMR imposed a fine of RMB24.38 million (US$3.6 million) on Eastman (China) Investment Management Co., Ltd (Eastman) for abuse of dominance. Following an investigation commencing in August 2017, Shanghai AMR found that Eastman held a dominant position in the market for ester alcohol-12 coalescing agents in China, taking into account its high market share and other factors indicating its substantial market power and absence of sufficient competitive constraints on the market. Shanghai AMR found that, from 2013 to 2016, Eastman imposed the following restrictive clauses in agreements with customers:
  - direct minimum purchase and take-or-pay requirements, pursuant to which customers need to purchase at least 60% or 80% of their actual annual demands of ester alcohol-12 coalescing agents from Eastman and need to pay for the minimum purchase amounts even if the purchase targets are not met; and
  - indirect minimum purchase requirement through the "most-favoured-nation (MFN)" clause and rebate policy, which conditions the entitlement to preferable terms (MFN) and rebates on minimum purchase requirements.

Shanghai AMR concluded that Eastman had abused its dominant position by unjustifiably imposing de facto exclusivity requirements which had anti-competitive foreclosure effects. The fine imposed by Shanghai AMR accounts for 5% of Eastman's revenue in 2016.

According to the official press release, as of October 2018, the Enforcement Authorities had investigated and concluded 55 cases of abuse of dominance.

HOW ARE INVESTIGATIONS BEING CONDUCTED?

Anti-trust investigations conducted by the Chinese authorities mirror international practice in many respects but have unique traits in keeping with the special China context. At the outset, it is worth noting several characteristics manifested in the investigations conducted by the Enforcement Authorities in China:

- **There is no legal profession privilege in China.** Chinese law does not recognize the doctrine of attorney-client privilege. As a result, any correspondence between a company and its lawyers (including a PRC-licensed lawyer, foreign lawyer in an international law firm, or its in-house counsel) would not be protected by such privilege. Information considered privileged in other jurisdictions could in principle be requested by the Enforcement Authorities in China. For example, memoranda or similar documents prepared by a company summarizing oral or written advice provided by these lawyers are also not privileged.
- **There is no privilege against self-incrimination in China.** The Enforcement Authorities could use as evidence supporting an infringement decision any statement which would involve admitting a breach of the ***2007 AML*** obtained from the addressee of the decision using compulsory powers of questioning.
- **Right to legal representation is particularly restrictive in China.** The Enforcement Authorities are not under legal obligation to give the company time to contact its internal or external legal advisers before commencing the investigation. In practice, the Enforcement Authorities may at their discretion wait for some time for internal or external lawyers to arrive, but trying to assert rights of presence of legal advisers may be considered "not co-operative". The notion of having lawyers shadow officials during an investigation or dawn raid in the way a company might do in other jurisdictions (such as the EU) is one that does not work in the same way in China. On the 25th session of the China-US Joint Commission on Commerce and Trade in December 2014, the Chinese government agreed that "under normal circumstances", a foreign company in an anti-trust investigation would be permitted to have counsel present and to consult with them during proceedings. Since then, the Enforcement Authorities are becoming more lenient in allowing legal counsel to attend meetings during the investigations or dawn raids.
- **There is no statutory "right of access to the file" in China.** Unlike in some jurisdictions (such as the EU), there is no statutory right of access to the file in the process of the investigations conducted by the Enforcement Authorities in China. The Enforcement Authorities are required by Chinese law to send a draft decision to the undertakings under investigation for review and comment before they adopt the final decision on the investigation. However, they have no obligation to grant access to the file based on which the decision is made, even if the undertakings under investigation so request.

For a flowchart illustrating a typical anti-trust investigation case in China, see ***Investigation process: flowchart.***

Initiating an investigation

The Enforcement Authorities may initiate an investigation either on receipt of a formal complaint or on its own initiative, possibly following receipt of information from an independent source.

The Chinese anti-trust investigations are largely complaint driven. There tends to be more of a risk of enforcement if complaints are received from third parties (including suppliers, customers, competitors, trade associations and business partners). When a complaint is made in writing with relevant facts and evidence also provided, the Enforcement Authorities would be legally obliged under the ***2007 AML*** to conduct necessary investigations.

If an Enforcement Authority decides to initiate an investigation, it would issue an official "notice of investigation". The number of officials must not be fewer than two and those officials must produce their "certificate of law enforcement". As in most jurisdictions, the Enforcement Authorities in China have the powers to conduct investigations without prior notice (sometimes referred to as dawn raids (see ***Practice note, What to do during a SAMR or Ministry of Public Security dawn raid***)). The Enforcement Authorities may sometimes conduct market studies or informal investigations before officially initiating an investigation.

Powers of investigation

The Enforcement Authorities possess wide-ranging investigative powers, enabling them to:

- Enter any premises, land and means of transport (may extend to private homes and vehicles).
- Require the production of documents.
- Carry out compulsory interviews.
- Examine books and business records.
- Inspect the companies' bank accounts.

The undertakings, the interested parties or other relevant entities or individuals under investigation must co-operate with the Enforcement Authorities, and cannot refuse or hinder the investigation conducted by the Enforcement Authorities.

If an individual or entity refuses to provide relevant materials or information, provides false materials or information, conceals, destroys or removes evidence, or acts in such a way so as to refuse or hinder an investigation, the Enforcement Authorities may both:

- Order the individual or entity to rectify its acts.
- Impose a fine of up to:
- RMB20,000 on an individual; or
- RMB200,000 on an entity.

In serious cases, the Enforcement Authorities may impose a fine of between RMB20,000 and RMB100,000 on an individual, or a fine of between RMB200,000 and RMB1,000,000 on an entity.

In October 2015, Anhui AIC announced that it had imposed a fine of RMB200,000 (approximately US$31,630) on Sunyard System Engineering Co Ltd for the company's failure to co-operate in an anti-trust investigation. The company (and two other companies) was investigated by Anhui AIC. During the investigation, Anhui AIC requested the company to provide various documents, but the company failed to provide the requested documents within the specified period of time. This is the first published case in which a company has been penalised in a separate decision for failing to cooperate in an anti-trust investigation.

In September 2018, Guangdong DRC fined two executives of Guangzhou Qingfeng Toyota Motor Sales Services a total of RMB20,000 (approximately US$2,926) for obstructing an anti-trust investigation. During an investigation launched by Guangdong DRC, the company's legal representative ordered the company's supervisor to unplug the USB flash disk from which the enforcement officials were retrieving evidence and to instruct other employees to shut down computers to disrupt the investigation. In addition, the legal representative also verbally insulted the officials. Neither individual provided relevant materials as required nor signed the documents sent by the officials. Guangdong DRC found that such conducts amounted to an unlawful obstruction of an anti-trust investigation under the ***2007 AML*** and imposed fines of RMB12,000 and RMB8,000 respectively. This marks China's first fine upon individuals for obstruction of anti-trust investigations.

Legal liabilities

Unlike some jurisdictions, the ***2007 AML*** provides no criminal penalties for anti-competitive conduct. However, note that there may be potential criminal penalties for misrepresentation or obstructing investigations.

If the undertaking is determined to conduct anti-competitive conduct, the Enforcement Authorities may order the undertaking to cease the illegal conduct, confiscate its illegal gains and impose a fine of between 1% and 10% of the turnover of the undertaking in the preceding fiscal year.

There are no specific rules on how and on what basis illegal gains should be calculated. "Illegal gains" under the 2007 AML could be interpreted as profits (that is, revenue minus cost) generated by a company from all of its illegal activities (that is, for the entire period of time when the illegal activities have been conducted).

The Enforcement Authorities enjoy enormous discretion in setting fines. Factors which the Enforcement Authorities would consider in terms of the specific amount of a fine include the nature, the degree of gravity and the duration of the violation. For example, in the auto parts cartel, when setting the basic amount of the fines, the NDRC took into account the factors such as "repeatedly entered into and implemented monopoly agreements, committed illegal conducts for a long time, and frequently fixed price."

It is not clear under the 2007 AML on whether the turnover on the China market or the global market would be used as the basis to calculate the fine. It is also unclear whether the turnover would cover the relevant product only (to which the illegal activities are relevant) or all the products of the company. On 22 May 2019, WU Zhenguo, Director-General of the SAMR's Anti-Monopoly Bureau, remarked in an interview that the SAMR would consider calculating fines based on a given undertaking's total sales as opposed to the sales of relevant products going forward. If implemented, this would mark a material change from the Enforcement Authority's previous fining practice (which has been to calculate fines based only on the turnover of the products concerned in an infringement) and would increase the deterrent effects of the 2007 AML. WU Zhenguo also indicated that the SAMR is now formulating rules on the calculation of fines. However, it remains unclear whether these rules are the draft guidelines on the calculation of illegal gains and fines which were previously published in June 2016 (namely, the ***Notice on Soliciting Public Opinions on the "Guidelines on Recognizing the Illegal Gains Obtained by Business Operators from Monopolistic Acts and Determining the Amount of Fines" (Draft for Comments) 2016***) but later reported to be shelved due to controversy.

If the undertaking is determined to conduct anti-competitive conduct, it may also bear civil liabilities if it causes loss to others. To date, most of anti-trust private litigations involve stand-alone action. Among the rare examples of follow-on anti-trust private litigations in China, the *Junwei Tian v Abbott and Carrefour* case is the landmark one. The plaintiff's claim followed the 2013 decision of the NDRC to fine six infant formula manufacturers, including Abbott, for RPM. The Chinese consumer claimed that Abbott and Carrefour had engaged in illicit conduct which resulted in him paying a higher price for a tin of infant formula purchased. In August 2016, the Beijing High Court rejected the plaintiff's appeal and found that the NDRC's decision alone was insufficient evidence that Abbott and Carrefour had engaged in the illicit conduct as it did not specify which distributors were involved. As the first court ruling on a follow-on private action, the judgement set a high burden for plaintiffs to discharge even in circumstances where an administrative decision on violation is in place. (See ***Practice note, Private anti-trust litigation in China: Monopoly agreement litigation***.)

Leniency

China's leniency program is set out in Article 46 of the ***2007 AML***, which provides that if an undertaking takes the initiative to report relevant information in relation to its participation in a monopoly agreement and provide important evidence to the Enforcement Authorities, the Enforcement Authorities may exercise their discretion to reduce the penalties on the undertaking or exempt the undertaking from penalties. As in most jurisdictions, the Chinese leniency program operates a sliding scale for reductions of fines depending on how quickly an undertaking comes forward. The 2019 Monopoly Agreement Provisions recently published by the SAMR sets out detailed rules on leniency procedure, pursuant to which the first, second and third leniency applicants (that offer crucial evidence) are entitled to a fine reduction of 80-100%, 30-50% and 20-30%, respectively.

The AMC circulated a draft leniency guideline in 2016 (namely, the ***Guidelines for Application of the Leniency Regime to Cases of Horizontal Monopoly Agreements (Draft for Comments) 2016***) and has approved the guidelines (with a final version to be published soon), the adoption of which will hopefully provide more detailed guidance and clarifications on the leniency program in China. At the current stage, when considering the application for leniency, undertakings should bear in mind the following factors:

- Assuming no application for immunity has been made by the undertaking before the investigation is initiated, the fact of the investigation should prompt consideration as to whether an application for leniency should be made during or immediately after it. An application for leniency at this stage may still be available.
- As a practical matter, there is arguably no real guarantee of full immunity in case of a leniency application, especially if the process is politicized.
- Even if full immunity from fines or reduction of fines is granted, the Enforcement Authorities may expect some form of concession (for example, a commitment to reduce prices or other commitment) on the part of the leniency applicant in return.
- The grant of immunity from fine or reduction of fines may depend on the leniency applicant's "attitude" during the investigation, that is, the applicant's level of co-operation, but also attitude towards the Enforcement Authorities and willingness to make an admission.
- The 2007 AML enables the Enforcement Authorities to recover illegal gains derived from the unlawful conduct even if full immunity from fines is given.
- There is no formal "marker" system in China and as such the undertaking may need to submit sufficient information in the first instance to secure its first place in the sequence of the undertakings' application for leniency to be granted full immunity.

Suspension of investigation

During the investigation, the undertaking under investigation may apply for suspension of the investigation, and commits to take measures to eliminate the effects of the anti-competitive conduct within a period recognized by the Enforcement Authorities. However, according to the 2019 Monopoly Agreement Provisions, investigations in respect of horizontal monopoly agreements relating to fixing price, restricting output or allocating market must not be suspended.

The application for suspension of investigation must be made in writing and set forth the facts suspected of violation and their potential effects, the proposed specific measures to eliminate the effects of such conduct and the time schedule to perform the commitments. Upon receipt and review of the application, the Enforcement Authorities may decide to suspend the investigation and issue a decision to suspend the investigation, if the undertaking under investigation commits to take specific measures to eliminate the effects of the suspected anti-competitive conduct within a period approved by the Enforcement Authorities.

The Enforcement Authorities will supervise the performance of the commitments. The undertaking shall submit written reports on the performance of the commitments at the request of the Enforcement Authorities. Where the undertaking has fulfilled its commitments, the Enforcement Authorities may decide to terminate the investigation.

The Enforcement Authorities should resume the investigation in any of the following circumstances:

- The undertaking has failed to perform its commitments.
- There have been material changes to the circumstances upon which the decision to suspend the investigation was made.
- The decision to suspend the investigation was made based on incomplete, incorrect or misleading information provided by the undertaking.

Procedures prior to a decision

The procedures to be followed by the Enforcement Authorities in making a decision on imposing administrative penalties are set out in:

- ***2007 AML.***
- ***Provisions on Administrative Penalties for Illegal Pricing 2010.***
- ***Law on Administrative Penalty 2017*** (2017 Administrative Penalty Law).
- 2019 Monopoly Agreement Provisions.
- 2019 Abuses of Dominance Provisions.

The procedures are as follows:

- **Fact finding.** The 2017 Administrative Penalty Law requires that the administrative authority that has the right to impose administrative penalties must find and establish the relevant facts before it imposes the administrative penalties. Therefore, the Enforcement Authority is required by law, before imposes the penalties on the undertaking, to verify and establish the relevant facts to the effect that the undertaking's activities are in violation of the 2007 AML.
- **Review of investigation results.** Upon completion of the investigation, the officials responsible for the investigation will prepare an internal report setting out the findings of the investigation and the proposed penalties, and the persons-in-charge of the Enforcement Authority should review the report.
- **Notification to the undertakings.** The Enforcement Authority should, before it makes the decision on imposing penalties on the undertaking under investigation, duly notify the undertaking under investigation of the facts of the violations, and the grounds and the basis of the imposed penalties. The undertaking under investigation is entitled to express opinions. The Enforcement Authority shall verify the facts, reasons and evidence asserted by the undertaking under investigation.
- **Public hearing.** According to 2017 Administrative Penalty Law, an undertaking that may be subject to a fine of a relatively large amount has the right to request a public hearing of the case and, with such a request, the administrative authority should arrange the public hearing. The public hearing is accessible to the public unless national secrets, trade secrets or private secrets are concerned. Therefore, if the Enforcement Authority decides to impose a fine, such a fine may usually be large enough for the undertaking under investigation to request public hearing.
- **Making decision on the penalties.** After the review of the results of the investigation, the notification to the undertaking and possibly the public hearing, the persons-in-charge of the Enforcement Authority should discuss internally and make its decision on whether to impose penalties and what penalties to be imposed on the undertaking under investigation.
- **Preparation and service of the decision.** If the Enforcement Authority decides to impose the penalties on the undertaking under investigation, the Enforcement Authority should prepare the decision in writing and duly serve the decision to the undertaking under investigation.
- **Performance of the decision.** Generally speaking, the decision, once served to the undertaking under investigation, should be performed by the undertaking (including the payment of the fine if imposed) within the time limit prescribed in the decision, regardless of whether the administrative review or the administrative litigation proceedings are initiated. According to the ***Administrative Enforcement Law 2011***, the administrative authorities are empowered to take enforcement action, if the undertaking fails to perform such decision within the time limit prescribed in the decision. In addition, with respect to monetary administrative penalties (such as fines), the administrative authorities are empowered to impose additional fines or penalties for the delayed payment of

such penalties and, if the payment is delayed for more than 30 days, the administrative authorities can enforce such monetary penalties or make an application to request the court to enforce the monetary penalties.

According to the 2019 Monopoly Agreement Provisions, 2019 Abuses of Dominance Provisions and 2019 Abuses of Administrative Powers Provisions, if the decision is made by a provincial-level Enforcement Authority, that provincial-level Enforcement Authority should submit relevant documents to the SAMR for record within seven business days after it makes that decision.

On 26 December 2018, the SAMR published the *Interim Provisions on Administrative Penalty Procedures in Market Regulation 2018* (市场监督管理行政处罚程序暂行规定) (2018 Penalty Provisions). Pursuant to the 2019 Monopoly Agreement Provisions and the 2019 Abuses of Dominance Provisions, the 2018 Penalty Provisions apply to matters (other than statute of limitations, case acceptance and jurisdictions) where specific antitrust rules regarding procedures are silent.

Challenging the Enforcement Authorities' decisions

Decisions of the Enforcement Authorities can be challenged through an administrative review procedure or an administrative litigation procedure in the Chinese courts.

According to the ***Administrative Reconsideration Law 2017*** and the relevant regulations, if an undertaking decides to apply for the administrative review of an Enforcement Authority' decision, the application should be filed within 60 days after the undertaking receives the Enforcement Authority' decision, and the right authority should conduct the administrative review and give its administrative review decision no more than 90 days after the receipt of the undertaking's application. (For more information on administrative reconsideration in China, see ***Practice note, Protecting commercial rights and interests in China: Administrative reconsideration***.)

According to the Administrative Procedure Law 2017 and the relevant regulations, if an undertaking decides to initiate an administrative litigation against the administrative review decision, the undertaking should bring the case to court within 15 days after the receipt of the administrative review decision. If an undertaking directly initiates an administrative litigation against an Enforcement Authority's decision without first going through the administrative review procedure, the undertaking should bring the case to court within six months after the Enforcement Authority's decision is known to the undertaking. The trial court should award its trial decision within six months after the date of acceptance and registration of the case, unless approved to be extended by the superior court of the trail court. The judgment made by the trial court would be appealable to the superior court of the trial court. (For more information on administration litigation in China, see ***Practice note, Protecting commercial rights and interests in China: Administrative litigation***.)

An undertaking has the statutory right to choose to either apply for the administrative review or directly initiate an administrative litigation without first going through the administrative review procedure. In practice, however, it might be advisable to go through the administrative review procedure before initiating an administrative litigation in some cases for the following reasons:

- The administrative reconsideration proceeding provides an additional channel to solve the dispute with the Enforcement Authority. If the undertaking is not satisfied with the administrative reconsideration decision, it could still initiate the administrative litigation.
- The administrative litigation proceeding is less flexible than the administrative reconsideration proceeding. In the administrative reconsideration proceeding, the undertaking usually has more opportunities than in the administrative litigation proceeding to further discuss the Enforcement Authority's decision with the Enforcement Authority and the relevant authority conducting the administrative reconsideration. In addition, in the administrative review proceeding, it is possible to settle the dispute with the Enforcement Authority. However, there is no settlement mechanism in the administrative litigation proceeding.

Statute of limitations

The ***2017 Administrative Penalty Law*** provides a statute of limitations of two years for infringements under the ***2007 AML***. This begins from the time the unlawful conduct occurred, or from the time the unlawful conduct ended in the case of continuing infringements.

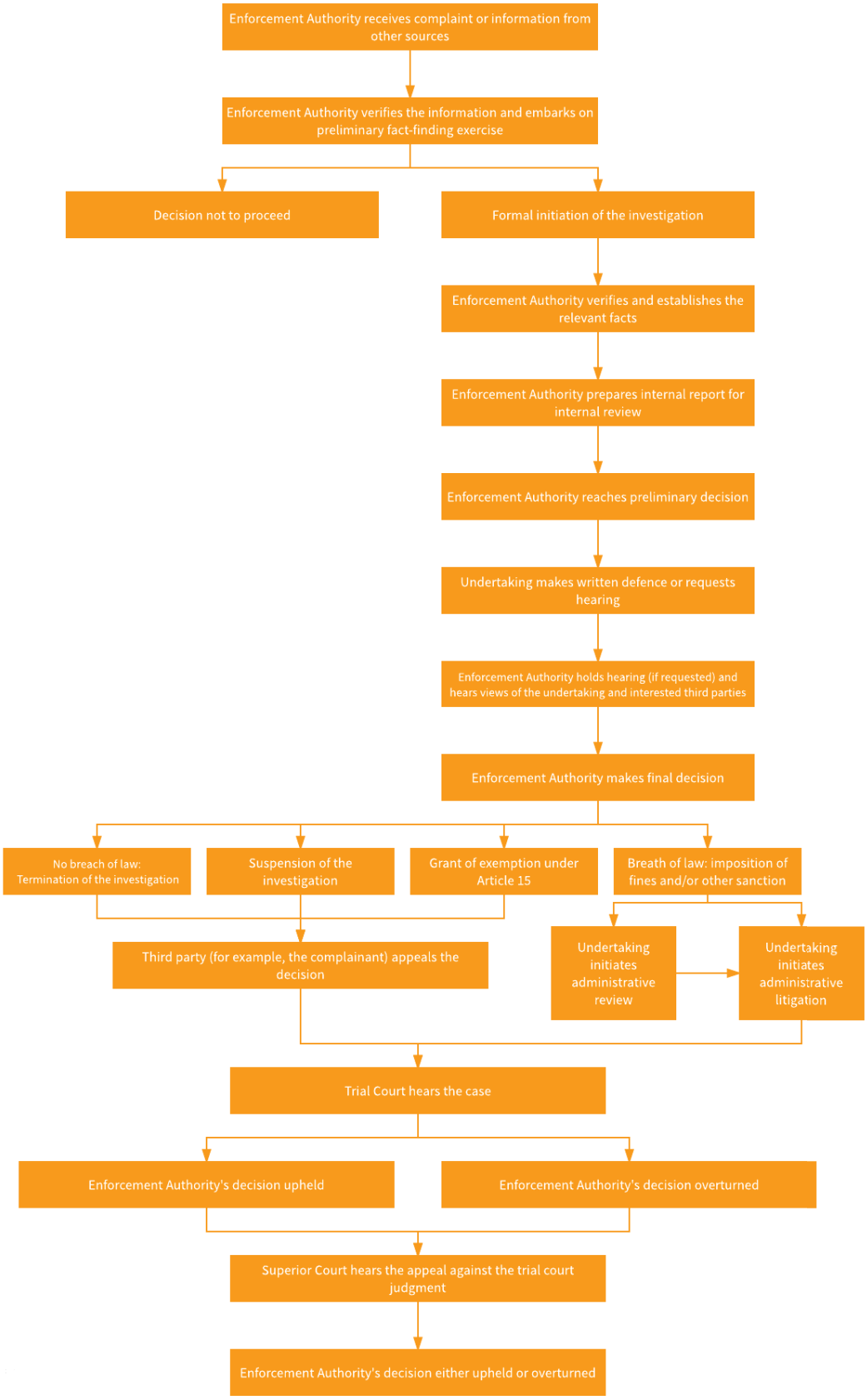
Confidentiality

The Enforcement Authorities and their officials are obliged to keep any business secrets that come into their knowledge during the process of investigation confidential.

An undertaking wishing to prevent information from being published or otherwise disclosed will need to provide reasons for the confidentiality claim. The final decision as to whether such information can be regarded as confidential rests with the Enforcement Authorities.

INVESTIGATION PROCESS: FLOWCHART

Practical Law China
Investigation Process



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