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Briefing note May 2015

NDRC releases new notice on pharmaceutical pricing investigations

On 5 May 2015, the National Reform and Development Commission (**NDRC**) published a new notice on "*Strengthening the Supervision of Pricing Activities in the Pharmaceutical Industry*" (**Notice**). The Notice sets out measures in support of the recent reforms by the NDRC of pricing in the pharmaceutical sector. Specifically, the NDRC and its local branches will launch a special six-month campaign to investigate unlawful activities with respect to pharmaceutical pricing across the pharmaceutical and healthcare industry. The Notice lists a range of unlawful activities which will be subject to careful scrutiny including certain infringements under the Anti-Monopoly Law (**AML**).

This briefing outlines the key provisions and points of interest covered in the Notice.

Price determination

As from 1 June 2015, the price of most pharmaceutical products will no longer be determined by the NDRC. Rather, the market will dictate the pricing as a matter of general principle. The Notice seeks to support this recent reform in the pricing arrangements for pharmaceutical products by strengthening NDRC's supervision on the pricing activities of pharmaceutical companies.

Key points

- This NDRC notice supports the recent reform in pricing arrangements for pharmaceutical products
- The NDRC will launch a special campaign in the next six months to investigate unlawful activities related to pricing across the pharmaceutical industry
- The NDRC has listed ten types of unlawful activities which will be subject to its scrutiny

Investigation Campaign

The NDRC and its local branches will, in the coming six months, conduct a special campaign to investigate unlawful activities across the pharmaceutical and healthcare industry. Specifically, the investigation will target pharmaceutical manufacturers, medical institutions, disease prevention and control centers, blood collection stations and centralized drug procurement platform operators.

The investigation will focus on "pharmaceutical products that are not facing sufficient competition" and "special pharmaceutical products." The former apparently covers drugs with a dominant market position, while the latter covers core drugs that have a significant impact on particular groups of patients, such as those with high blood pressure, diabetes, asthma, rheumatism, etc.

In particular, the main priority will be on monitoring and information dissemination related to the factory (port) price and the actual purchase and sale price of pharmaceutical products that are not facing sufficient competition. With respect to pharmaceutical products where there is frequent and large price fluctuations or there are significant differences with international prices, prices of other similar drugs and other regions, there should be timely analysis and a specific investigation into the cost price as needed.

In particular, the Notice lists ten typical unlawful activities that are subject to NDRC scrutiny and which will be the focus of this investigation. It is worthwhile to note that certain of the listed activities are price-related such as excessive pricing and price collusion which are regulated under the AML. Some other listed activities are regulated under the Price Law, the Anti-Unfair Competition Law or other regulations relating to the pharmaceutical sector.

The ten types of unlawful activities which will be the subject of the inspection as specified in the Notice include:

- spreading false information about price increases, driving up prices and distorting the market order;
- price collusion and price fixing;
- abuse of dominance through excessive pricing;
- false original prices, false labelled prices, first raising prices followed by applying discounts, misleading price indication, hiding conditions attached to prices and other price fraud activities;
- arbitrary price increases or hidden price increases of drugs admitted by a centralized procurement program;

- failure of base-level medical institutions and pilot public hospitals that are subject to the control regime on basic pharmaceuticals to abide by the policy of "zero profit margin" on relevant pharmaceuticals;
- failure by public medical institutions to implement the official pharmaceutical price mark-up policy;
- failure by pharmaceutical companies and healthcare institutions to implement the policies on low cost drug pricing management and exceeding the standards of average daily cost for low cost drugs;
- exceeding the maximum retail price for selling government-priced drugs; and
- failure to follow rules on marking prices clearly and the system of public notice on prices.

Conclusion

The Notice clearly indicates that the NDRC now places high importance in carefully scrutinizing pricing and related practices in the pharmaceutical sector. It is expected that the pharmaceutical industry will experience increasing pressure on pricing and greater regulatory scrutiny of its practices, including from an antitrust perspective. Notably, the Notice has particularly specified price fixing, excessive pricing and price collusion as unlawful activities, which themselves already amount to potential infringements under the AML. This initiative is aimed at maintaining downward pressure on pricing while direct price control is being relaxed.

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