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## Zhenguo WU, SAMR: A review of achievement and future direction of antimonopoly law enforcement in China

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**Director General**

Anti-Monopoly Bureau of the State Administration for Market Regulation (SAMR), Beijing

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Interview conducted by Dr. Wei Tan  
Managing Director, Mingde Economic Research Inc., Washington, D.C.

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### ABSTRACT

Director General Wu reviewed the main achievement of AML in the last ten years, the changes in institution design and enforcement priority after the establishment of SAMR. Director Wu also expressed his view on a number of topics, including vertical merger, the use of economic analysis, vertical price maintenance and the interaction of IP and antitrust.

*Le directeur général Wu a examiné l'accomplissement le plus important d'AML (lutte contre le blanchiment d'argent) au cours des dix dernières années, le changement dans la conception de l'institution et la priorité à niveau de l'application de la loi après l'établissement du SAMR. Monsieur Wu a aussi exprimé son opinion sur certains sujets, y compris les concentrations horizontales, l'usage de l'analyse économique, le maintien vertical des prix et l'interaction de la propriété intellectuelle et du droit de la concurrence.*

### Since 2018

Director General, Anti-Monopoly Bureau, State Administration for Market Regulation

### 2016-2018

Director General, Anti-Monopoly Bureau, Ministry of Commerce

### 2011-2016

Deputy Director General, Anti-Monopoly Bureau, Ministry of Commerce

# Zhenguo Wu, SAMR: A review of achievement and future direction of antimonopoly law enforcement in China

**How do you see the administrative enforcement of Anti-Monopoly Law evolved over the past ten years, and what do you think are the highlights over the past ten years? What are the main achievements?**

In the past ten years, China's Anti-Monopoly Law ("AML") regime has gradually improved, and significant steps have been taken to build a system to promote fair competition. The enforcement of the AML has yielded remarkable results. Enterprises now thrive in an ever-improving environment. International engagement on the AML has moved forward in great depth, and a pro-competition culture has become widespread. The implementation of the AML has seen considerable progress.

- First, developing a framework of AML rules with Chinese characteristics. The promulgation and implementation of the AML is a milestone in China's deepening reform and opening up, and an important indicator of the improvement of the socialist market economic system. For the past ten years, we have focused on perfecting the anti-monopoly legal system with Chinese characteristics and ensuring AML-related activities are fully aligned with the rule of law. We have established and implemented a fair competition review system to prevent from the source the abuse of administrative powers to eliminate or restrict competition.
- Second, protecting fair competition in the market. In the past ten years, nearly 170 cases of monopoly agreements and nearly 60 cases of abuse of dominant market position have been investigated and closed, with accumulated fines exceeding RMB 11 billion. Some 190 cases of abuse of administrative powers to eliminate or restrict competition have been investigated and closed. Nearly 2,400 cases of concentration of undertakings have been reviewed and closed, and nearly 30 cases of failure to notify according to law have been investigated and closed. The enforcement of the AML has been enhanced to effectively prevent monopolistic conduct, deter offenders, clean up the market, and protect fair competition.

- Third, protecting consumers. We have focused on the pronounced problems that enterprises and consumers have vehemently complained about, and strictly investigated monopolistic behaviors in livelihood sectors such as gas, power, water, telecommunications, gold jewelry, milk powder, etc., and carried out in-depth, dedicated campaigns to rectify anti-competitive and monopolistic behaviors in public utilities, in order to safeguard the legitimate rights and interests of consumers, protect and improve people’s livelihood, and help people gain a stronger sense of entitlement.
- Fourth, creating a climate that is pro-business, law-based and consistent with international norms. The enforcement of the AML has resulted in the crackdown on monopolistic conduct, leveled the playing field for market participants, and helped engender a business climate that is law-based, pro-business and consistent with international norms. At the same time, we have entered into more than fifty partnerships to exchange on competition policy and anti-monopoly enforcement practices with antitrust authorities in about thirty jurisdictions such as the United States, the European Union, and Australia, and carried out enforcement cooperation on dozens of major cross-border M&A deals to jointly maintain fair competition in the international market. We set up a specific chapter on competition policy and AML enforcement in free trade agreements and other economic and trade agreements, in order to promote multilateral or bilateral trade and economic relations and to protect the achievements of investment and trade liberalization. Through AML enforcement, we work with other competition authorities to promote the convergence and harmonization of competition rules and promote China’s high-quality, two-way opening-up.

“The promulgation and implementation of the AML is a milestone in China’s deepening reform and opening up, and an important indicator of the improvement of the socialist market economic system”

**With the establishment of State Administration for Market Regulation (“SAMR”), what are the envisaged changes to the institutional design, enforcement priorities, etc.?**

Owing to vigorous institutional reforms by the Chinese government this year, the State Administration for Market Regulation (“SAMR”) was created, which consolidates the responsibilities for AML enforcement and eliminates any pre-existing overlap among the three former anti-monopoly authorities. Now that the reform of the anti-mo-

nopoly enforcement authorities at the SAMR level is complete, the Anti-Monopoly Bureau within SAMR has taken on the responsibilities for AML enforcement. The Anti-Monopoly Bureau has ten divisions, seven of which handle cases. This consolidates supervisory activities before, during and after any AML violation. We will focus on unifying the enforcement mandate, defining the allocation of enforcement functions, and improving the procedures around enforcement authorization. The reform and consolidation of local AML enforcement agencies are also progressing in an orderly manner. Through continuous improvements of the system and processes, we are fast moving toward the goal of building a unified, authoritative and efficient system of AML enforcement. Going forward, AML enforcement will mainly include the following aspects:

- The first is to commit more resources to creating an internationally competitive business environment. We should focus on creating a market environment that rewards honesty, creditworthiness and fair competition, that allows for optimal resources allocation, promotes the survival of the fittest, and makes China more attractive to international business. We should treat state-owned enterprises and private enterprises, and domestic and foreign enterprises equally, and carry out fair and impartial law enforcement to level the playing field for all market participants. We will check and correct all kinds of abuse of administrative powers to eliminate or restrict competition, and resolutely crack down on market splitting and sector monopoly, and open up the market for innovation and entrepreneurship.
- The second is to strengthen AML enforcement in key areas. We should coordinate efforts to supervise before, during and after any AML violation to prevent and curtail monopolistic behaviors. It is essential that high-profile cases in key areas be dealt with in accordance with the law and the overall integrity of law enforcement be maintained at the same time. We should intensify efforts of AML enforcement on intellectual property (“IP”), and guide undertakings to appropriately exercise their IP rights. We will continue to strengthen enforcement in the field of livelihood sectors and to protect consumers’ rights and interests. We will also strengthen supervision on competition in the Internet domain sector according to law, and create a fair competitive market for the sustainable and healthy development of new economic sectors.
- The third is to increase the effectiveness of AML enforcement. We shall further rationalize the enforcement processes and procedures, improve the uniformity of enforcement, and protect the legitimacy and interests of undertakings. We will further introduce novel enforcement methods, increase the use of economic analysis tools, and continuously improve the robustness of case handling. Recognizing the cost-effectiveness of supervision, we will continue to improve enforcement on the efficiency side. We will also vigorously

promote the disclosure of case information, increase transparency on and access to enforcement service, and enforce the law in a rigorous, compliant, impartial and appropriate manner.

**“Through continuous improvements of the system and processes, we are fast moving toward the goal of building a unified, authoritative and efficient system of AML enforcement”**

**What should be done to coordinate the enforcement of Anti-Monopoly Law by SAMR at the central government level and local level?**

Under the AML, enforcement responsibility resides with the central government, and shall be overseen by the AML enforcement authorities as designated by the State Council (“Anti-Monopoly Enforcement Authority” or “AEA”). This helps ensure the consistency of AML enforcement and build a unified and open market system with orderly competition throughout the country. At the same time, considering the large number of cases and the heavy workload, it would be unrealistic for the AEA to process all cases directly. The AML also stipulates that the AEA may, where appropriate, authorize the corresponding agencies within the governments of provinces, autonomous regions and municipalities directly under the Central Government to take charge of relevant AML enforcement duties. But provincial law enforcement agencies must not delegate further downward to sub-provincial agencies.

In accordance with the latest institutional reform, SAMR is now centrally responsible for AML enforcement. We are currently looking into a mechanism to delegate enforcement power to corresponding provincial agencies with enforcement mandate in accordance with the AML. Since most cases of concentration of undertakings will have nationwide impact, it makes sense for SAMR to review such cases directly. As to cases involving monopoly agreements, abuse of dominant market position or abuse of administrative powers, there are two parts to the overall considerations: first, the corresponding provincial agencies must be fully motivated to discharge their responsibility over local matters and maintain a fair and competitive market within their jurisdiction; second, SAMR should strengthen its guidance and oversight on provincial AML matters, harmonize enforcement criteria, establish fair, open and transparent market rules, and resolutely prevent and remove local protectionism and market splitting .

**“Since most cases of concentration of undertakings will have nationwide impact, it makes sense for SAMR to review such cases directly”**

**How do you envision the enforcement of the AML in the next ten years?**

- First, establish an AML regulatory framework which is systematically sound, scientifically proven and operationally efficient. We should base ourselves on China’s reality, draw on others’ proven experience, and vigorously call for the update of the AML and its supporting legislation. In doing so, we should complete the enactment, revision and revocation of the supporting regulations issued by the three former AML enforcement agencies, further improve the transparency and predictability of enforcement, and provide institutional assurances for AML enforcement. We should promote in-depth development of the fair competition review system, which shall be implemented effectively and comprehensively at the city and county level. We should focus on solving problems, further rationalize the AML enforcement system, improve the authorization process, promote the integration of law enforcement agencies, and achieve the optimization, collaboration and efficiency of AML enforcement.
- Second, strictly regulate impartial and well-regulated law enforcement. Globally competition is not only among enterprises, but also on market system and business environment. We should carry out enforcement in a normalized and sophisticated manner, crack down on monopoly agreements and abuse of dominant market position according to law, ensure comprehensive supervision on concentration of undertakings, and check and correct all kinds of abuse of administrative powers to eliminate or restrict competition according to law. We should increase the use of economic analysis tools in enforcement practices, and enhance the ability to practice the law under theoretical guidance and to solve problems based on national reality. We should further strengthen the regulatory framework, improve enforcement procedures, limit discretion, and increase predictability for the undertakings. We should treat all types of market players fairly and impartially, and strive to create a level playing field. We should channel our efforts to building a strong enforcement team, and improve the skills and rigor of law enforcement, in order to protect fair competition.
- Third, protect, encourage and promote innovation. The era of innovation-driven development requires us to pay more attention to the innovation environment and the digital economy. Enterprises are the driving forces of innovation. If competition policy is to promote innovation as the first driving force

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for development, we should cultivate an environment and atmosphere conducive to innovation, balance the protection of intellectual property rights, and adapt to the development and changes of economic environment and business models. Enterprises need innovation and law enforcement agencies require innovation as well. Against this backdrop, innovation is the future. We must resolutely crack down on market division and industry monopoly, and open up market space for innovation and entrepreneurship. We must effectively conduct AML enforcement in the realm of intellectual property and steer undertakings to properly exercise their IP rights. We should strengthen the supervision and regulation of competition in the Internet field according to law and create a fair competitive market environment for the sustainable and healthy development of new economic industry.

- Fourth, protect consumers. We must take safeguarding consumer rights as the responsibility and mission of antitrust law enforcement, carry out effective law enforcement in sectors concerning the national economy and people's livelihood, safeguard and improve people's livelihood, and help people gain a stronger sense of benefit. We should take effective measures to solve prominent problems that enterprises and consumers have strongly complained about, to build a consumer environment that people are satisfied with and assured of, to effectively protect consumers' right of choice and right of fair trade, to enhance the overall welfare of consumers, in order to guard consumers' rights and interests.
- Fifth, deepen international engagement on competition policy and AML enforcement. We must understand the development of economic globalization, adapt to the growing trend of China's opening up, further strengthen the cooperation mechanism with antitrust law enforcement agencies of various countries, further broaden the cooperation areas of law enforcement, and continuously enrich the cooperation. We must pay more attention to participating in the formation of a bilateral and multilateral international competition rules system, strengthen consultation and dialogue, learn from each other, and promote international coordination of competition rules.
- Sixth, increase outreach to create a pro-competition culture. We should promote better corporate compliance practices, increase industry outreach, and spread a pro-competition culture. We should aim to set up a new kind of anti-monopoly think tank with Chinese characteristics, which will rise to prominence and exert international influence. We should continue to raise the awareness of market players and the public about the AML, promote the society's adoption of the principles of fair competition and appreciation of the values of innovation, and create a conducive external environment for AML enforcement.

**“We should complete the enactment, revision and revocation of the supporting regulations issued by the three former AML enforcement agencies, further improve the transparency and predictability of enforcement, and provide institutional assurances for AML enforcement.”**

**In recent years, we have witnessed a growing number of high-profile vertical mergers. The traditional view on vertical merger is that these transactions may have significant efficiency gains and are less likely to cause harms to consumers. There is an active debate about whether these efficiency gains can be achieved by the merger and whether antitrust authorities should take a stronger stand towards vertical mergers. What is your view on the anti-competitive concerns regarding vertical merger?**

Regarding the assessment and analysis of vertical concentration, China's AML enforcement agencies gradually share similar views with authorities in other jurisdictions such as the US and the EU. The possible cost savings and efficiency gains from vertical concentration, such as avoiding “double marginalization,” have been widely recognized by the economic circle, but this does not mean that the enforcement agencies should give “green light” to all vertical concentrations. For vertical integration between companies with market control powers in both upstream and downstream, the companies have the incentive and ability to increase the competitive costs of their competitors, squeeze out and restrict competitors, and ultimately harm the interests of consumers by foreclosing inputs or customers. Such vertical concentration may result in the elimination of or restrictions on competition and thus requires enforcement priority, which is the consensus of all law enforcement agencies. In this connection we have always adopted a consistent enforcement standard in analyzing the potential competitive harm of vertical concentration, and have not taken a tougher position.

Looking at the vertical concentration cases we vetted, to prevent or mitigate the possible foreclosure effect, China's AML enforcement agencies have conditionally approved Google's acquisition of Motorola, GM's acquisition of Delphi and other vertical integration deals that may eliminate or restrict competition in relevant markets. It is worth pointing out that the challenge to enforcement in vertical concentration is not only about ascertaining the harm, but more on the design of remedies. While horizontal concentration cases tend to adopt the structural remedies of divestiture to eliminate the increase of market power due to horizontal overlap, vertical concentration remedies are likely to lean towards behavioral remedies,

such as adoption of fair, reasonable and non-discriminatory terms, opening of data platform, commitment on interoperability, etc. Meanwhile, considering the possible positive effect of vertical concentration, such behavioral conditions usually have an expiration date, and the parties reserve the right to request change or termination of the behavioral commitments based on changes in the competitive landscape. This shows the respect for self-discipline of the market, and in the case of fundamental changes in competition, there is room for the implementation of additional and more restrictive conditions.

**China has a very vibrant Internet economy. Mergers between Internet companies have attracted lots of attention lately. Some people have argued that SAMR should take an active role to prevent the monopolization of the Internet by a few technology companies. What is your view on merger control policy towards the digital sector of the economy?**

Technological innovation has led to innovation in market models and business practices. As the poster child of the new economy, the Internet sector focuses on dynamic competition, innovative competition and cross-sector competition, which is quite different from traditional industries in terms of rulebook and competitive dynamics. AML enforcement in this field thus cannot readily adopt the conventional norms of analysis and assessment. With the advancement of technology, new monopolistic behaviors, such as algorithmic collusion and algorithmic discrimination, can be highly invisible and difficult to investigate. These features open up AML enforcement to new challenges. We shall bear in mind some key principles in reviewing concentrations in the digital economy. The first is to be open-minded but prudent in regulation at the same time. We need to foster a conducive environment but also maintain fair competition, to steer and promote the sustainable and healthy development of the new economy. The second is rigorous enforcement. We should strengthen comprehensive supervision on concentration of undertakings to prevent market monopoly. Concentrations that may eliminate or restrict competition shall be subject to conditions or banned according to the law. The third is to strengthen investigation and research. China should strengthen mutual learning and experience sharing in the Internet industry with the EU and the US, formulate review rules that adapt to the trends and competitive movement of the Internet industry, respect the actual situation of the industry in terms of relevant market definition, competitive evaluation, and remedies, and exercise sensible supervision. The fourth is to develop novel enforcement methods. It is important to strengthen public scrutiny, take advantage of the supervision of small and mid-sized enterprises and users, and promote multidimensional and coordinated social governance. It is also important to clarify the principles of governance, strengthen the responsibility of the stakeholders, improve the formulation of the competition mechanism, and explore the effective competition constraints on Internet giants through market-based approaches.

**“Regarding the assessment and analysis of vertical concentration, China’s AML enforcement agencies gradually share similar views with authorities in other jurisdictions such as the US and the EU.”**

**Economic analysis has become increasingly important in the merger review process, in particular in complex global transactions. What is your observation of the role of economic analysis in a merger filing? Do you think its importance could be further enhanced in the future?**

We highly value and encourage the adoption of economic analysis tools in AML enforcement, which is consistent with the consensus and common practice. Economic analysis is hugely important to the review of significant and complicated cases of concentration of undertakings. It mainly shows in the following ways:

- First, economic analysis is an important method for the filing parties to help case handlers quickly understand the status of market competition. If the filing parties estimate that the case would involve complicated competition issues, they will proactively submit economic analysis report on certain issues. The logic and content of certain filing documents integrate the methodology and ideas of economic analysis therein. It enables the case handler to have a better sense of the competitive dynamics and the likely impact on competition early on.
- Second, economic analysis is an effective tool for the filing parties to proactively eliminate competition concerns of the case handlers about the case. Through strategic communication with the case handler, filing parties may spot potential competition concerns in the transaction and then submit an economic analysis report on such concerns, aiming to preemptively address the competition concerns of the law enforcement agencies. We had cases in which the case handler preliminarily identified the possibility of unilateral price increase on a certain product, and subsequently the filing parties submitted an economic report on this issue to support their view that the transaction will cause competition concerns from the perspective of capacity constraints through critical loss analysis.
- Third, economic analysis is an important reference for law enforcement agencies to review concentration of undertakings. When reviewing major and complex cases, we attach importance to the support of third-party consulting firms in assessing certain competition issues, who could help validate our judgment on such issues. Overall, in the review process, cases involving third-party economic consulting firms accounted for more than 20% of the total non-simplified procedure cases.

- Fourth, economic analysis is also an effective way for other market participants to flag competition issues. If other market participants believe that the transaction is likely to give rise to competition concerns, they can also submit economic analysis to help case handlers get a balanced view on the real situation of the market and the competition concerns that may arise from the transaction, and validate the rationale of the analysis and conclusions in the filing documents.

Going forward, economic analysis will play a more important role in AML enforcement in the following aspects:

- First, the value of economic analysis is reflected not only in choosing analytical methods or tools, but also in informing AML enforcement with the underlying logic of the economic theory.
- Second, the conclusions of economic analysis are important references for case review and investigation.
- Third, the basis of economic analysis is the real data of the market and the transaction. The purpose of economic analysis is to examine the competition at risk or to verify preliminary conclusions, which could be introduced at all stages of law enforcement, including relevant market definition, competition assessment, behavioral analysis, remedies or rectification measures, etc.
- Fourth, economic analysis is generally based on assumptions, which have certain limitations.

Therefore, we should summarize experience, optimize analytical methods, reduce bias of conclusions, and make full use of economic analysis in AML enforcement.

**“Economic analysis is hugely important to the review of significant and complicated cases of concentration of undertakings.”**

**In a world where there are fewer classic price-fixing cases, would SAMR move towards a more aggressive approach towards information exchange, and other similarly gray areas of cartel agreements?**

Horizontal price fixings have the immediate danger of eliminating or restricting competition, undermining consumer and public interests. Consistent with the world’s largest anti-monopoly enforcement agencies, the enforcement agencies in China also regard this as a key enforcement area. In the past ten years, we have investigated a large number of horizontal price agreements, involving sectors such as electricity, pharmaceutical, automotive, electronics, etc., effectively protecting fair competition in the market and safeguarding public interest. Through a decade of AML enforcement and education, business

awareness of fair competition and law compliance has gradually improved, and the number of cases involving the reaching or implementation of horizontal price agreements has declined. However, horizontal price agreements are still a priority of AML enforcement.

In recent years, emerging sectors such as Internet platforms and cloud computing have developed rapidly and made great economic impact. However, cyberspace is by no means a “lawless frontier” and AML enforcement has no gray area. Undertakings should operate in accordance with the AML with honesty and integrity. We will continue to watch out for alleged monopolistic behaviors in such areas, including algorithmic collusion, algorithmic discrimination, and data sharing, etc.

**Previously NDRC has taken a position that RPM is per se illegal and the Shanghai Court has repeatedly ruled that RPM cases should be determined based on a rule of reason. How do you view the impact of the AML private litigations on the way that SAMR conducts its investigations of RPM?**

Article 14 of the AML explicitly prohibits any monopoly agreement between undertaking and trading partners to fix the resale price and set a minimum resale price. The text suggests the AML applies the illegal per se rule to the above conducts. At the same time, according to Article 15 of the AML, if resale price maintenance meets the conditions stipulated in Article 15, Article 14 of the AML shall not apply.

**“From the perspective of law enforcement, resale price maintenance severely restricts the distributors’ freedom of pricing, eliminates competition between dealers, pushes up prices, prevents consumers from benefiting from effective competition, and harms social welfare.”**

Since the implementation of the AML, law enforcement agencies have taken the initiative to investigate dozens of cases of resale price maintenance, involving multiple sectors such as premium liquor, infant milk powder, name-brand cars, home appliances, medical devices, auto parts, etc., effectively protected fair competition in the market and the legitimate rights and interests of consumers. From the perspective of law enforcement, resale price maintenance severely restricts the distributors’ freedom of pricing, eliminates competition between dealers, pushes up prices, prevents consumers from benefiting from effective competition, and harms social welfare. The AML enforcement agencies have fully considered the justifications of the vertical price restraints provided by the undertakings in individual cases.

For the next step, SAMR will continue to carry out enforcement work in accordance with the provisions of the AML. For resale price maintenance, if an undertaking can prove that the agreement under investigation meets the requirements of Article 15 of the AML, will not cripple competition in the relevant market and will enable consumers to reap the benefits arising from such agreement, such agreement shall be exempt under the law.

**How do you see the relationship between Anti-Monopoly Law and intellectual property protection? What factors should law enforcement agencies consider in order to prevent the abuse of intellectual property rights to eliminate competition?**

With the increasing contribution of science and technology to economic and social development, intellectual property has become a point of contention among companies and even countries. The AML and the protection of IP rights share the same purpose of protecting competition. Both of them are encouraging innovation and safeguarding consumer interests. It is essential to have both in competition protection and innovation motivation. Based on this, Article 55 of the AML provides that the AML shall not apply to the exercise of intellectual property rights by undertakings pursuant to the relevant IP laws and regulations. However, the AML shall apply to the abuse of IP rights by undertakings to eliminate or restrict competition.

Recognizing that competition issues arising from the intersection of IP and anti-monopoly are complicated, we are now drafting the Anti-Monopoly Guidelines on Intellectual Property (“Guidelines”) to clarify our analytical principles, approaches and considerations, which could provide undertakings with more clarity. In the process of drafting the Guidelines, we have learned from the legislative and enforcement practices of major jurisdictions such as the US and the EU, and have fully considered the reality and characteristics of China. Through drafting and promulgating the Guidelines, we hope to enhance the transparency on AML enforcement, improve the predictability of business activities by undertakings, and guide them to properly exercise intellectual property rights, which could protect fair competition in the market, incentivize innovation, and preserve consumer welfare and public interests.

**Article 17 of the AML prohibits unfair and unreasonable high prices. When it comes to royalties, what factors can the agency take into consider to demonstrate whether a royalty is unfairly high?**

Article 17 of the AML stipulates that undertakings with dominant market position are prohibited from selling goods at unfairly high prices. The fact that an undertaking commands a dominant market position is a prerequisite for establishing the illegal practice of selling goods at

unfairly high prices. China’s AML enforcement agencies do not presume that they command a dominant market position in the relevant market merely on the basis of ownership of patents and other intellectual property rights, but rather analyze in a case-by-case basis.

“Recognizing that competition issues arising from the intersection of IP and anti-monopoly are complicated, we are now drafting the Anti-Monopoly Guidelines on Intellectual Property (“Guidelines”) to clarify our analytical principles, approaches and considerations, which could provide undertakings with more clarity”

China’s AML enforcement agencies fully respect intellectual property rights and the right of independent pricing by rights-holders, and do not interfere directly with the licensing rate on patents. For patent holders with a dominant market position, the AML enforcement agencies would examine whether the licensing fee constitutes an unreasonably high price, mainly considering whether the licensing fee is too prohibitive due to unfair licensing practices or terms. The factors under consideration usually include whether the calculation of the licensing fee is fair and reasonable, the share of the patent in the value of the relevant product, the patentee’s commitment to the patent license, whether there is a licensing condition that causes the price to be unfair, the history of patent license, or comparable licensing fees, etc.

It is a rather complicated matter to determine that the patentee collects unreasonably high licensing fees. The AML enforcement agencies in China will strictly abide by the AML, adhere to case-by-case analysis, conduct law enforcement in a prudent and scientific manner, protect and promote innovation, and maintain fair competition. ■

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