Public Enforcement of Antitrust Law in China: Perspective of Procedural Fairness

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Abstract:

Some high-profile antitrust investigations such as the one against Qualcomm by the National Development and Reform Commission ("NDRC") of the People's Republic of China ("PRC"), initiated in November 2013 and concluded in February 2015, with a sanction order almost reshaping the global wireless patent landscape, has drawn the worldwide attention to the public enforcement of antitrust law in China. Entering into the 7th year of the Anti-Monopoly Law ("AML") in force, the enforcement by China's antitrust authorities has moved up a gear. NDRC and the State Administration for Industry and Commerce ("SAIC") have both lunched substantial enforcement actions in respect of monopoly agreements and abuse of dominance. Looking at several significant antitrust investigations and reviews, questioning and criticism on the Chinese antitrust public enforcement procedures are put forward, because it seems to the public, especially to people outside China, those China's powerful state central bodies have a fearsome reputation. It is argued that some important documents like sanction orders are not publicly issued in complete, which results in suspicion of international community on the lack of transparency in the process of Chinese public enforcement. In addition, whether all proceedings are consistent with the best practice of due process as those in the EU and the US is another point at question in respect to the Chinese public enforcement.

In this paper, detailed explanation will be presented in terms of the procedures and regulations regarding the antitrust public enforcement in China. It is worthy of attention that, the antitrust public enforcement is part of administrative enforcement in China. This means that the procedure of Chinese antitrust public enforcement has to comply with the current system of Chinese administrative laws, so it is unlikely to be completely aligned with procedures that seem to be universally applied in western jurisdictions. This may be the reason for the worldwide misunderstanding of the Chinese antitrust public enforcement. It will be also demonstrated in this paper that procedures of all investigations and reviews have been conducted strictly in accordance with Chinese law. Companies involved in the enforcement will find it difficult to challenge the conclusion under the current Chinese legal system.

Although the antitrust public enforcement in China has been carried out pursuant to Chinese laws and regulations, the current procedural system is not yet perfection, and there is room for improvement. On account for procedural fairness, some suggestions for optimizing the procedures of the Chinese antitrust public enforcement under the current legal system of China will be put forward in this paper. For example, (1) it is important to establish a unified antitrust enforcement authority rather than maintaining the current three authorities; (2) better transparency should be introduced in future enforcement activities; (3) the investigators should recognize the importance of economic analysis; (4) more defense from investigated parties should be heard, and (5) a more standardized procedural regulation for

dawn raid will contribute to the procedural fairness in the Chinese antitrust public enforcement as well.

Introduction

The Chinese antitrust authorities are probing into a broad range of sectors and the focus of investigations is expanding from the traditional areas of interest to new frontiers such as the abuse of standard essential patent ("SEP"). In the past years, the Chinese authorities showed a greater tendency to initiate investigations in response to the complaints they received, which seems to have increased the possibility of multinational companies' behavior being found as the breach of the AML in China.

Although the Chinese antitrust authorities are sometimes criticized by the international community for targeting foreign companies in order to protect Chinese domestic counterparts, the authorities do not show an intention of avoiding carrying out investigations against international companies in 2015. It is also worthy of mention that, the heads of the state gave speeches in international forums, clarifying the situation that the Chinese antitrust authorities do not discriminate against foreign companies. For example, recently, Xi Jinping, the President of the PRC, denied the questioning that China's recent monopoly penalties on a few international corporations was a signal of a rise in protectionism, at the 2015 Boao Forum. Li Keqiang, the Premier of the State Council of the PRC, said at the Summer Davos forum in September of 2014, that the recent antitrust probes had not targeted specific firms or industries.

China's increased level of antitrust law enforcement activities and the high-profile media coverage of its antitrust investigations have prompted growing attention and concern from the international community. It is suggested that procedural fairness has been the focus of concern. Despite of the questioning and criticism, it can be argued that the Chinese authorities have been exercising their enforcement powers strictly pursuant to the current Chinese laws and regulations. However, this does not mean that Chinese authorities have grounds for complacency, because the procedure of antitrust enforcement is not perfect and there are several measures that can be taken to improve the Chinese antitrust enforcement procedure.

Criticism and Controversy about Chinese Antitrust Public Enforcement

Compared to 100 years' history of developments of antitrust law of its western counterparts, China's AML is still in its childhood. It can be understood that the antitrust enforcement in China cannot be flawless, and indeed, the Chinese antitrust authorities are subject to criticism since the AML formally came into force. Generally, NDRC is considered as aggressive in performing its duty in antitrust investigation, and SAIC is relatively low profile while the Ministry of Commerce is regarded as cautious in its enforcement practice.

For the past a few years, the Chinese antitrust authorities have significantly accelerated the pace of public enforcement, along with which numerous criticism and different views have been put forward, especially in terms of procedures. The white heat of the public's questioning, probably mainly arisen from the investigation against Qualcomm, which was launched in November 2013 and concluded in February 2015.

According to a report from the US-China Business Council ("USCBC"), foreign companies have well-founded concerns in terms of how the antitrust investigations are conducted and decided in China, including fair treatment and nondiscrimination, lack of due process and regulatory transparency, lengthy time periods for merger reviews, role of non-competitive factors in competition enforcement, determination of remedies and fines as well as broad definition of monopoly agreements.[1]

Foreign complaints range from worries that foreign firms are being unfairly targeted to concerns over the use of strong-arm tactics by Chinese regulators.

Apart from the USCBC, the European Union Chamber of Commerce in China ("EU Chamber") also expressed its concerns: "The problem with the recent cases is that they are so in-transparent that it leaves a lot of speculation about the possible intention."[2]

In addition, unlike the US and Europe, which tend to release hundreds of pages of detailed rulings in antitrust disputes, China typically only announces its findings in a brief document, one or two pages long. This also leads to the poor transparency that the EU Chamber questioned about.[3]

It is clear from the comments touched on above, that the lack of transparency in the process of the antitrust enforcement and the procedural matters have drawn most of public attention, and whether discrimination and protectionism take place is another significant concern. On the other hand, realizing China is becoming one of the most important antitrust jurisdictions in the world, the international community is expecting the Chinese authorities to introduce greater transparency, better-designed procedures, the best practice of due process and more rights of defense guaranteed for companies involved in investigations. In fact, such attention reflects the greater role that China has in the world economy and in the antitrust public enforcement area. The attention also makes the level of fairness in procedures increasingly important.

Antitrust Public Enforcement under Chinese Legal Framework

1. Administrative Enforcement

In China, antitrust public enforcement is one of various types of administrative enforcement, which means that antitrust public enforcement has to be carried out not only pursuant to the AML, but also pursuant to related administrative laws and regulations.

Under the current framework of the administrative laws, in China there are Administrative Penalty Law, Administrative Permission Law, Administrative Reconsideration Law, Administrative Litigation Law, etc. Currently, it is believed that a law specifically on administrative procedures, i.e., Administrative Procedures Law, which will back up the best practice of due process in China, is in the process of drafting.[4]

Since the Chinese antitrust authorities have to exercise their powers in accordance to the AML as well as the laws set forth above, it is thus a basic principle that the regulations and rules formulated by the authorities have to be consistent with those administrative laws, even if this will result in the difference from some regulations in other jurisdictions. This means that the Chinese antitrust public enforcement practice is unlikely to be aligned to that in other jurisdictions, including the US and the EU, completely.

2. Tripartite System of Enforcement

It is generally known that the antitrust public enforcement powers in China are shared by three different government agencies, namely MOFCOM, NDRC, and SAIC. MOFCOM, through its Anti-monopoly Bureau, is responsible for reviewing M&A transactions and other types of proposed business concentrations. It may approve these transactions, with or without conditions, or reject the transactions. NDRC, through its Price Supervision and Inspection and Anti-monopoly Bureau, manages enforcement against price-related conduct by companies, including price-related aspects of monopoly agreements, and abuse of market dominance to set or control prices. SAIC, through its Anti-monopoly and Anti-unfair Competition Enforcement Bureau, is in charge of investigating non-price-related monopolistic conducts, including monopoly agreements and abuse of market dominance.

This tripartite system of the administrative enforcement will also lead to many potential conflicts between NDRC and SAIC, who share enforcement responsibilities in the areas of restrictive agreements and abuse of market dominance,[5] given that it is always hard to distinguish between price-related conducts and non-price related conducts.

Meanwhile, some academic experts and antitrust practitioners have held the view that having three parallel antitrust enforcement authorities will not only be inefficient but may also cause conflicts and friction, leading to fragmented, incoherent or even inconsistent decisions.

Although the tripartite system is operating with some modest benefits, one of which is that it creates competition in the enforcement and can increase output and improve the quality of the products the authorities are intended to supply. The decentralization of the enforcement

has resulted in more serious problems, such as the inconsistency and potential duplication of enforcement efforts. For foreign companies, who do not have a sound understanding of the Chinese administrative structure, they are likely to be confused by the set-up of the enforcement regime.

3. Legal Framework for Procedures of Public Enforcement

One of the questions that are put forward in terms of the investigation against Qualcomm is that the sanction order was not published in its complete version nor published immediately on the day the decision was made. This makes the public suspect that, transparency, which is valued in the best practice of due process, is ignored, to some extents, in the Chinese antitrust public enforcement.

However, it can be argued that NDRC did in a way in accordance with the AML and other related laws and regulations, and the lack of the application of due process is not true.

According to Article 41 and Article 44 of the AML:

> *Article 41 The authority for enforcement of the Anti-monopoly Law and its staff members are obligated to keep confidential the commercial secrets they come to have access to in the course of law enforcement.*
>
> *Article 44 Where after investigation into and verification of the suspected monopolistic conduct, the authority for enforcement of the Anti-monopoly Law concludes that it constitutes a monopolistic conduct, the said authority shall make a decision on how to deal with it in accordance with law and **may** make the matter known to the public.*

NDRC chose not to release the decision about the investigation against Qualcomm in full for the sake of assuming its obligation to keep commercial secrets of Qualcomm in confidential. Also, the word "may" is used in the Article 44, which suggests that it is not obligatory for NDRC to make its decision public.

Despite the fact that this practice has invoked the public's questioning towards the NDRC, the way NDRC is performing is nearly flawless under the current laws.

In fact, Chinese laws and regulations have established almost well-planned procedures of the antitrust enforcement, which can also guarantee the rights of defense of the entities under investigations as well as guaranteeing the procedural fairness in the enforcement.

Apart from the general rules set forth in the administrative laws, NDRC and SAIC also formulated specific rules to regulate the enforcement they carry out. For example, the *Rules on the Hearing and Review of Price-Related Administrative Punishment Cases,* promulgated by NDRC and took effect in 2014, stipulates various types of NDRC's handling opinions, among which the Advance Notice of Administrative Punishment is worthy of attention:

> *Article 11 The handling opinions issued after the hearing of a Case shall be any of the following types:*
>
> *(1) Where there are indeed illegalities subject to administrative punishments, opinions on meting out administrative punishments shall be put forward, and the person in charge of the relevant competent price department or the authorized person in charge of the price supervision and inspection agency shall be requested to issue the Advance Notice of Administrative Punishment;*
>
> *…*
>
> *Article 12 After a competent price department has issued the Advance Notice of Administrative Punishments to the parties concerned, if the facts, grounds or evidence provided by the parties concerned during statement, defense or public hearing are substantiated, the said department shall adopt the opinions of the parties concerned, and may, where necessary, hear the Case again and re-issue handling opinions.*

The Procedures of Public Enforcement Comply with Chinese Law

It is argued in the previous part that in term of the investigation into Qualcomm, together with the investigations on the automotive sector and milk powder producers that provoked the public's concerns about the poor transparency and the lack of the best practice of due process, NDRC exercised its power and made decisions strictly in accordance with the procedures as set by the AML and other related regulations.

As an experienced antitrust lawyer who participated in many the investigations, I would say that the Chinese authority had strictly followed the procedures rules as set by the current Chinese laws/regulations. Accordingly, one cannot argue that the Chinese authority did not follow the Chinese law for the investigation procedures, but only argue that the Chinese authority did not follow the best practice in western jurisdictions for the investigation procedures.

Take NDRC as an example, investigation procedures of the antitrust public enforcement in China stipulated by the AML and related laws and regulations is as follows:

1. Verification of Report

The enforcement authorities shall begin their investigation upon the reception of reports that include the relevant facts and evidence in written form. The reports must be verified by the authorities according to Article 38 of the AML. After the verification, the authorities shall decide whether further investigation is needed.

Any organization and individual have the right to report. For example, one can report to NDRC by sending his materials to an email account. But according to the Administrative Penalty Law, [6] in the circumstances where an illegal act is not discovered within two years of its implementation, administrative penalty shall no longer be imposed. If the timing of the report is not within 2 years, the enforcement authority will not take any action.

However, not all the reports will lead to investigation. The enforcement authorities will choose to handle the ones that were complained the most and have a significant impact on the public.

2. Investigation Measures

After the verification of report, the enforcement authority will narrow its investigation range to a specific industry or even a specific company. To dig out the truth, it is entitled five investigation measures[7] according to the AML.

> (1) Enter the business premises of the interested parties who are under investigation or any other relevant place to investigate. This has also been called as the Dawn Raid. During the Dawn Raid, the enforcement agency has the right to enter the business premises of suspected undertakings to conduct investigations without prior notice. The enforcement agency can also go to such premise with prior notice. It is the discretion of the enforcement agency to choose which method to use.
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> (2) Inquire the interested parties who are under investigation, interested parties, or other relevant entities or individuals, and request them to disclose relevant information. There are also two (2) ways to conduct the investigation. One is to talk with such parties during the Dawn Raid at the business premises of the suspected undertaking. The other is to request the undertakings to visit office of the enforcement agency.
>
> (3) Review and duplicate the relevant business documents, agreements, accounting books, business correspondences, electronic data, files, or documentations of the interested parties who are under investigation, interested parties, or other relevant entities or individuals. This investigation method can, too, be conducted in two (2) ways. One is to review and duplicate the materials at the business premises of

suspected undertakings. The other is to review and duplicate materials provided by the suspected undertakings to the enforcement agency.

(4) Seize and detain the relevant evidence. The enforcement agency is responsible to keep the evidence safe and confidential. [8]

(5) Inquire about the bank accounts of the interested parties who are under investigation. This method is to facilitate the enforcement agency to get to know the cash flow of the suspected undertaking which may imply the details or evidence of the monopoly conducts.

Besides, each of the five investigation methods mentioned above shall be taken subject to the approval by principal officials of the antitrust enforcement authorities, and such approval shall be issued in written form.[9]

3. Number of Officials and Record

During the investigations that carried out in the five methods set forth before, the following two rules are stipulated to guarantee the procedural fairness[10]:

(1) Number of Enforcement Officials

When the antitrust enforcement authorities are investigating an alleged monopolistic conduct, at least two officials shall be present for the investigation. The officials shall present their enforcement badges at the beginning of the investigation.

(2) Record

When an inquiry or investigation is carried out, a record in written form of the inquiry or investigation shall be produced and signed by the investigated party.

4. Confidentiality

The obligation that the antitrust enforcement authorities shall keep confidential the commercial secrets to which they have access during the investigation and was explained previously in the Part II.

5. Right of Making Defenses

The undertakings under the investigation and the interested parties shall have the right to make defenses.[11] The enforcement authorities shall verify the facts, justifications and evidence presented by the said undertakings or interested parties.

The right of making defenses is very important in terms of determining the responsible party and the appropriate penalty regarding the investigation. The right shall be guaranteed throughout the entire investigation procedure.

6. Verification & Publication

When the investigation is closed and the involved parties have fully stated their opinions, the enforcement authority in charge shall make a decision on how to deal with the monopolistic conduct, and may publicize its decision.[12] Here, the enforcement agency have the right to choose whether to publicize its decision or not according to the law.

And as explained previously in the Part II, it is not obligatory for the antitrust authorities to make its decision public.

7. Suspension & Termination

Once the investigation begins, it can be suspended or terminated if certain conditions have been fulfilled:

As for suspension, if the interested parties under investigation promise (with concrete measures) to eliminate the effects of the conduct through the use of concrete measures within the time limit accepted by the Chinese antitrust authorities, the Chinese antitrust authorities may decide to suspend the investigation. [13] To make the agency decide to suspend the investigation, the interested parties shall use his statement right to fully exchange opinions with the enforcement agency. Once the promise is made by the undertaking and accepted by the agency, such promise shall be recorded in the decision of the enforcement agency.

As for termination, if the interested parties implement the promise, the Chinese antitrust authorities may decide to terminate the investigation. However, under the three (3) following circumstances, the Chinese antitrust authorities shall resume the investigation[14]: the interested parties fails to implement its promise; significant changes have taken place to the circumstance on which the decision of suspending the investigation was made; or the decision on suspending the investigation was made on the basis of incomplete or inaccurate information submitted by the interested parties.

8. Juridical Remedy

If the interested parties is alleged with abuse of dominate market position or monopoly agreement, it may apply for an administrative reconsideration or lodge an administrative lawsuit according to law.[15]

Improvement Expected in the Future

The Chinese antitrust public enforcement is still immature and experiencing further challenges for development. In order to establish a more effective, transparent and fair public enforcement regime, it is necessary to draw upon experience of the EU and the US, and make necessary adjustment to the current investigation procedures. However, such adjustment should be done through revisions of the current Chinese law/regulations that stipulate the procedures of antitrust public enforcement. As related as above, in addition to the AML, these laws/regulations also includes Administrative Penalty Law, Administrative Permission Law, Administrative Reconsideration Law, Administrative Litigation Law, and the upcoming Administrative Procedures Law.

In fact, NDRC and SAIC have demonstrated their willingness to increase the procedural fairness of their enforcement efforts. For example, several regulations and guides (see the table below) were released in succession.

Authority	Names	Effective Year
NDRC	Several Provisions on Regulating the Price-related Administrative Penalty Power	2014
	Rules on the Hearing and Review of Price-related Administrative Punishment Cases	2014
	Provisions on Evidence for Administrative Penalty for Price-related Violations	2013
	Provisions on the Procedures for Price-related Administrative Penalties	2013
	Provisions on the Administrative Procedures for Law Enforcement Against Price Fixing	2011
SAIC	Provisions on the Procedures for Industry and Commerce Authorities to Investigate and Sanction	2009

	Monopoly Agreements and Abuse of Dominant Market Position	
	Provisions on the Procedures for Industry and Commerce Authorities to Prohibit Excluding or Restricting Competition by Abusing Administrative Powers	2009

However, the implementation of new procedural regulations does not surely lead to a higher level of procedural fairness. The following significant changes, from an experienced antitrust lawyer's perspective, will contribute to the accomplishment of procedural fairness in Chinese antitrust public enforcement:

1. A Unified Antitrust Enforcement Authority

As explained previously, the current tripartite system of the antitrust enforcement has not only caused the confusion among companies, but also acted as the culprit of inconsistency of decision-making. It is therefore necessary to establish a unified authority to take the full responsibility of all aspects in terms of the Chinese antitrust public enforcement.

2. Greater Transparency

The United Nations Economic and Social Commission for Asia and the Pacific (the ESCAP) provides a complete and detailed definition of transparency: firstly, decisions taken and their enforcement are conducted in a manner that follows rules and regulations; secondly, information is freely available and directly accessible to those who will be affected by such decisions and their enforcement, and thirdly, enough information is provided and that it is provided in easily understandable forms and media.[16] Accordingly, in antitrust area, a transparent enforcement procedure requires (1) decisions or judgments made by administrative enforcers must be based on antitrust law and regulations publicly available; (2) the enforcement of the law must follow the procedural rules; and (3) information related on enforcement should be freely available and directly accessible to the parties concerned and third parties whose interests stand to be affected by enforcement; as well as (4) enough information on enforcement should be provided in easily understandable forms and media to the public. This definition includes the openness of the decision-making and enforcement processes as well as access to and distribution of information.[17]

3. More Defense from Investigated Entities to be Heard

The AML and some regulations stipulate that the entities under investigations have the obligation of cooperating with the authorities, and the entities' cooperative attitudes will be valued when the authorities make decisions or issue sanction orders.

For example, in accordance with the AML:

> *Article 42 The undertakings under investigation, the interested parties or other relevant units or individuals shall cooperate with the authority for enforcement of the Anti-monopoly Law in performing their duties in accordance with law, and they shall not refuse to submit to or hinder the investigation conducted by the authority for enforcement of the Anti-monopoly Law.*

In practice, the rights of defense of the investigated entities cannot be easily realized because the defense may be regarded as a signal of uncooperative attitudes, thus reducing the possibility of a mitigated punishment, a consequence that the investigated entities do not want.

The rights of defense need to be respected throughout the process of investigations especially when sanctions may be imposed. Therefore it is necessary to set boundaries between exercising the rights of defense and refusing to cooperate with the authorities, and to allow more defense from the entities under investigations.

4. More Open Attitude to Evidences from the Investigated Companies, including Economic Analysis

The Chinese antitrust authorities are generally considered as dominant in investigations and the companies investigated may find it difficult to be treated equally, and the evidence from the investigated parties may be undervalued. It is suggested that it will help improve the Chinese antitrust enforcement if the Chinese antitrust authorities are more open to the evidences provided by the investigated companies, especially if investigators will pay more attention to economic analysis.

For better applying the AML to keep the order of market and maintain the sufficient competitiveness, economic analysis is necessary to be introduced for evaluating the economic factors in the decision-making process. The current antitrust laws in China also encourage the introduction of economic analysis. For example, Article 13 of the *Working Rules for the Anti-Monopoly Committee of the State Council* provides the legal basis of introducing economic analysis in dealing with antitrust issues:

> ***Article 13*** *For scientific consultation on significant issues, the Anti-Monopoly Committee shall organize consulting panels consisted of* ***experts in law and***

> ***economics*** *and other concerned persons. Members of the consulting panel shall be recommended by a member agency of the committee. It shall be the duty of the committee to prescribe the specific method to select and appoint members of the consulting panel.*

On the global level, the role of the modern economic analysis in competition policies in Europe and the US has been vital in both the antitrust enforcement and the antitrust proceedings. The use of economic analysis is useful when working closely and on a consistent basis with other jurisdictions. In other words, reliance on economics, rather than other policy considerations, is likely to reduce conflicts between jurisdictions. This is important when investigating international companies and when taking into account that the globalization of the antitrust public enforcement is an irreversible trend.

5. A More Standardized Procedure for "Dawn Raid"

In 2014, SAIC and NDRC raided the Chinese offices of Mercedes-Benz and Microsoft that were suspected of monopolistic conducts. The unannounced inspections shocked many international companies doing business in China. As the Chinese antitrust enforcement is experiencing an upward trend, dawn raids in the antitrust enforcement may increase.

Although the AML and some related regulations provide the legal basis for the antitrust authorities to conduct on-the-spot inspection by entering into the business premises or other relevant places of the investigated undertakings, formal protections for undertakings are absent under the AML, and the rights of defense of the companies under investigations are extremely limited.

Because lacking the recognition of a notion of legal privilege, there are not many standards adopted by NDRC or SAIC as to the scope or type of evidence that could be collected in a dawn raid – and similarly no limitations on interviews with individual employees.

It nevertheless remains important that companies active in China should have in place a rigorous protocol that ensures compliance with the investigation, but also protects, so far as possible, their rights under Chinese law.

Conclusion

As China is becoming one of the most important antitrust jurisdictions in the world, the international community is paying more attention to Chinese antitrust public enforcement. Meanwhile, the public, particularly people from western countries, put forward their concerns about China's antitrust public enforcement, e.g., they suspect that transparency and the best practice of due process are ignored in China.

However, from the perspective of an experienced Chinese lawyer, the antitrust investigations were all carried out strictly in accordance with Chinese laws. It is worthy of attention that, the antitrust public enforcement is part of administrative enforcement in China. This means that the procedure of Chinese antitrust public enforcement has to comply with the current system of Chinese administrative laws, so it is unlikely to be completely aligned with procedures that seem to be universally applied in western jurisdictions. This may be the reason for the worldwide misunderstanding of the Chinese antitrust public enforcement.

It is understandable that the antitrust public enforcement practice in China is not flawless, especially when taking into consideration that the AML is new and the Chinese antitrust authorities have not accumulated enough experiences to deal with all kinds of antitrust issues in China. We have realized the significance of establishing better-planned procedures of antitrust enforcement, and it is believed that the authorities are in their process of improvement. Several measures are proposed in this paper such as establishing a unified antitrust enforcement authority, introducing more transparency, allowing more evidence and defense from the investigated parties, and standardizing the procedures of "dawn raid". From an experienced antitrust lawyer's perspective, these measures will help guarantee a higher level of procedural fairness in China's antitrust public enforcement.

[1] *Competition Policy and Enforcement in China*, see https://www.uschina.org/sites/default/files/AML%202014%20Report%20FINAL_0.pdf

[2] see, http://uk.reuters.com/article/2014/09/09/uk-china-antitrust-eu-idUKKBN0H40SB20140909

[3] see, http://uk.reuters.com/article/2014/09/09/uk-china-antitrust-eu-idUKKBN0H40SB20140909

[4] http://www.acla.org.cn/html/industry/20150309/20116.html

[5] *The Enforcement of the Anti-Monopoly Law in China: An Institutional Design Perspective,* see http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1783037

[6] See Article 29 of the Administrative Penalty Law

[7] See Article 39 of the AML

[8] See Article 41 of the AML.

[9] See Article 39 of the AML.

[10] See Article 40 of the AML.

[11] See Article 43 of the AML.

[12] See Article 44 of the AML.

[13] See Article 45 of the AML.

[14] See Article 45 of the AML.

[15] See Article 53 of the AML.

[16] See United Nations Economic and Social Commission for Asia and the Pacific, *What is Good Governance (2007), available at* http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp

[17] See F. Weiss, *Transparency as an Element of Good Governance in the Practice of the EU and the WTO: Overview and Comparison*, (2006-2007) 30 Fordham International Law Journal