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## **SAMR Finalises Long-awaited Reform of Its Antitrust Agency**

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### **Introduction**

On August 9, 2018, the finalised China's three-pronged plan for consolidating its antitrust agencies under the State Administration for Market Regulation (“SAMR”) is released. This initiative has been anticipated and speculated on since the central government's release of its structural reform plan on 21 March 2018. According to the government's plan, the three-pronged plan should have been released on 20 June 2018, but this was substantially delayed due to differences of opinion regarding the reform.

### **New Anti-monopoly Bureau**

According to the finalised plan, a new Anti-monopoly Bureau in charge of both merger review and antitrust investigations is established under the SAMR. This bureau will be one of the most powerful administrative bureaus in China. According to the finalized plan, the new Anti-Monopoly Bureau is responsible for drafting supplementary antitrust rules and guidelines, carrying out antitrust enforcement, guiding enterprises to responding to and coping with antitrust investigations or litigations in foreign jurisdictions, organizing and guiding the work of fair competition review. In addition, the new Anti-monopoly Bureau is also in charge of antitrust international cooperation and communication work, as well as the routine work of Anti-monopoly Commission under the State Council.

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In addition to the new Anti-monopoly Bureau, two other bureaus will be established under the SAMR. One will be responsible for the enforcement of the Anti-unfair Competition Law and the Price Law, which previously fell under the ambit of:

- the Anti-monopoly and Anti-unfair Competition Enforcement Bureau of the former State Administration for Industry and Commerce (“SAIC”); and
- the Price Supervision, Check and Anti-monopoly Bureau of the former National Development and Reform Commission (“NDRC”).

Further to divesting their antitrust enforcement functions to the new Anti-monopoly Bureau, the remaining functions of the two former bureaus will be combined into a new department under the SAMR. It is no coincidence that the new agency's full name is the Price Supervision, Check and Anti-unfair Competition Bureau.

The second bureau is the Law Enforcement and Inspection Bureau, which will be responsible for all other law enforcement activities, except for the abovementioned SAMR antitrust, anti-unfair competition and price supervision enforcement activities.

Further to unveiling the antitrust agency reconstruction plan, a detailed layout of the divisions under the SAMR Anti-monopoly Bureau – including which divisions will be established and who the directors will be – will reportedly be made public in approximately 10 days.

To facilitate a better understanding of the SAMR's new structure, the structure and functions of China's former antitrust enforcement agencies, as well as some speculations and expectations for the reconstruction plan, are set out below.

### **Structure and Function of Former Antitrust Enforcement Agencies**

Prior to the administrative structural changes, three authorities played different roles in China's antitrust enforcement:

- Ministry of Commerce of the People's Republic of China (“MOFCOM”) was responsible for merger review;

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- the SAIC was responsible for taking action against non-price-related antitrust violations, such as abuse of market dominance and monopoly agreements (including both vertical and horizontal agreements); and
  - the NDRC was responsible for taking action against price-related abuse of market dominance conduct and monopoly agreements (including both vertical and horizontal agreements).

In practice, the SAIC and the NDRC were also responsible for investigating non-price-related IP rights abuse violations and price-related IP rights abuse violations, respectively. For instance, the SAIC and the NDRC each drafted different versions of IP rights-related monopoly violation regulations.

Based on the Plan on Deepening the Reform of the Party and State Institutions, as issued by the central government on 21 March 2018, the decision was made to integrate the antitrust enforcement functions of MOFCOM, the NDRC and the SAIC into the SAMR, to be established on the foundations of the former SAIC and led by the minister of the former SAIC, Zhang Mao. On 20 April 2018 relevant officials in charge of antitrust enforcement at MOFCOM and the NDRC were transferred to the SAMR. In addition, the newly established SAMR combines the functions of the former General Administration of Quality Supervision Inspection and Quarantine and the China Food and Drug Administration.

### **Speculation**

The three-pronged plan was announced in early 2018 and was expected to be finalised on 20 June 2018. However, the plan's completion was substantially delayed. Before the announcement, there had been speculation that two separate antitrust bureaus would be established under the SAMR, one responsible for merger review and the other for antitrust investigations, including for both price-related and non-price-related suspected violations. Other commentators had hypothesised that only one anti-monopoly bureau would be established, which would oversee merger control review and antitrust investigations. Other commentators rightly maintained that the plan's final form and further details would not be known until the last moment.

### Early SAMR Activities

The SAMR has already established its own website, on which the websites of the former MOFCOM Anti-Monopoly Bureau, the NDRC Price Supervision, Check and Anti-Monopoly Bureau and the SAIC Anti-Unfair Competition and Anti-Monopoly Bureau can be found. On 23 June 2018 the SAMR published its first penalty decision in its own name, which concerned four Shenzhen tugboat companies. On 25 July 2018 it further published its first conditional approval decision in its own name, which concerned the proposed merger of two glass makers. It seems that the pace of China's antitrust enforcement has not been slowed down by the structural changes, although the transitional period is still ongoing.

### Comment

The SAMR's enforcement features and the detailed reform plan should continue to be monitored, as they will significantly affect the antitrust risks which companies face in practice. For instance, a detailed layout of the divisions under the SAMR Anti-Monopoly Bureau has yet to be announced. Under the former antitrust agencies of the SAIC and the NDRC, two divisions were in charge of violation investigations. However, under the SAMR's new Anti-Monopoly Bureau, it remains to be seen how many investigation divisions will exist and what their focus will be. These issues are of practical importance for the enforcement of the Anti-monopoly Law. In addition, the enforcement team's composition is expected to influence the SAMR's enforcement characteristics.

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