

IP-Related Anti-Monopoly and Anti-Unfair Competition Enforcement in China

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I. ANTI-UNFAIR COMPETITION LAW AND IP LAWS	

China has two competition laws. One is the Anti-Unfair Competition Law,² and the other is the Anti-Monopoly Law.³ Anti-

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² Legislative Affairs Office of State Council of the People's Republic of China, <http://fgk.chinalaw.gov.cn/article/flk/199309/19930900267494.shtml>

³ <http://fgk.chinalaw.gov.cn/article/flk/200708/20070800267812.shtml>

Unfair Competition Law took effect in 1993.⁴ It includes provisions regarding trademark and trade secret protection, counterfeiting of famous designers, abuse of administrative power restricting competition, and prohibition of commercial bribery.⁵ At the administrative level, the Anti-Unfair Competition Law is enforced by China's State Administration for Industry and Commerce (SAIC).⁶ In 2014, the SAIC System investigated 34,081 cases of unfair competition.⁷

Article 5 of the Anti-Unfair Competition Law provides that a business operator shall not harm his competitors in market transactions by resorting to any of the following unfair means: (1) counterfeiting a registered trademark of another person, (2) using for a commodity without authorization a unique name, package, or decoration of another's famous commodity, or using a name, package or decoration similar to that of another's famous commodity, thereby confusing the commodity with that famous commodity and leading the purchasers to mistake the former for the latter, (3) using without authorization the name of another enterprise or person, thereby leading people to mistake their commodities for those of the said enterprise or person, and (4) forging or counterfeiting authentication marks, famous-and-excellent-product marks or other product quality marks on their commodities, forging the origin of their products or making false and misleading indications as to the quality of their commodities.⁸

Article 10 provides that a business operator shall not use any of the following means to infringe upon trade secrets: (1) obtaining an obligee's trade secrets by stealing, luring, intimidation or any other unfair means, (2) disclosing, using or allowing another person to use the trade secrets obtained from the obligee by the means mentioned in the preceding paragraph, and (3) in violation of the

⁴Legislative Affairs Office of State Council of the People's Republic of China, *supra* note 1.

⁵*Id.*

⁶*Id.*

⁷Antimonopoly Bureau Of The State Administration Of Industry And Commerce, available at <http://www.saic.gov.cn/english/aboutus/Departments/>

⁸See Legislative Affairs Office of State Council of the People's Republic of China, available at <http://www.chinalaw.gov.cn/article/fgkd/xfq/> (providing general access to searchable Chinese laws, regulations and regulatory documents).

agreement or against the obligee's demand for keeping trade secrets, disclosing, using or allowing another person to use the trade secrets he possesses.⁹ Obtaining, using or disclosing another's trade secrets by a third party who clearly knows or ought to know that the case falls under the unlawful acts listed in the preceding paragraph shall be deemed as infringement upon trade secrets.¹⁰ In addition, China has three IP laws. One is the Patent Law and related implementation and regulations, and the administrative agency in charge is China's State Intellectual Property Office¹¹. Another is the Trademark Law, and the administrative agency in charge is SAIC's Trademark Bureau.¹² The third IP law is Copyright Law, and the administrative agency in charge is China's National Copyright Administration.¹³

China also set up special courts for intellectual property rights (IPR) cases in Beijing, Shanghai and Guangzhou in 2014.¹⁴ The courts focus largely on civil and administrative lawsuits regarding patents, new plant varieties, integrated circuit layout designs and technological knowledge.¹⁵ IPR cases play an important part in advancing the country's technical innovation and economic development, and they require more skilled judges and more professional trials.¹⁶ The IPR courts also handle appellate cases regarding other IPR-related matters, such as copyright and trademark disputes, in these three cities.¹⁷ Appeals against the verdicts of the IPR courts will be heard in local higher people's

⁹ Available at

<http://fgk.chinalaw.gov.cn/article/flk/199309/19930900267494.shtml>

¹⁰ *Id.*

¹¹ Patent Law of the People's Republic of China. (Promulgated by the Nat'l People's Cong., Mar. 12, 1982, effective Apr. 1, 1985) available at <http://fgk.chinalaw.gov.cn/article/flk/198403/19840300267423.shtml>

¹² See TRADEMARK OFFICE OF THE STATE ADMINISTRATION FOR ADMINISTRATION & COMMERCE OF THE PEOPLES REPUBLIC OF CHINA, available at <http://www.ctmo.gov.cn/zzjg1/sbjjj/> (last visited May 13, 2015).

¹³ Natn'l Copyright Admin. of the Peoples Republic of China, available at <http://www.ncac.gov.cn/chinacopyright/> (last accessed May 10, 2015).

¹⁴ Supreme People's Court, <http://www.court.gov.cn/zixun-xiangqing-8335.html>

¹⁵ *Id.*

¹⁶ The Supreme People's Court of the People's Republic of China, available at <http://www.court.gov.cn/zixun-xiangqing-7079.html>.

¹⁷ The Supreme People's Court of the People's Republic of China, available at <http://www.court.gov.cn/fabu-xiangqing-13655.html>

courts.¹⁸ Presidents, vice presidents and chief judges of these courts have been appointed by local legislatures.¹⁹

Chief Justice Zhou Qiang, president of the Supreme People's Court, said "that procedural rules, evidence rules and litigation preservation measures will be improved to provide better IPR protection, and the courts will establish a professional forensic investigation system to determine technical facts."²⁰ The Beijing IPR court handled 221 cases in one month since being established on Nov. 6, according to data from the State Intellectual Property Office.²¹ About 63 percent of the cases are administrative lawsuits regarding patents and brands, according to the office.²²

II. CHINESE ANTI-MONOPOLY LAW AND ITS IP-RELATED RULES

The Chinese Anti-Monopoly Law was adopted at the 29th session of the Tenth National People's Congress on August 30, 2007.²³ It took effect in 2008.²⁴ Article 55 of Anti-Monopoly Law states that this Law does not govern the conduct of business operators to exercise their intellectual property rights under laws and relevant administrative regulations on intellectual property rights; however, business operators' conduct to eliminate or restrict market competition by abusing their intellectual property rights shall be governed by this Law.²⁵

¹⁸ Wen Zhenghua & Wang Xin, *China's IPR courts 'would be helpful*, CHINA DAILY (Dec. 23, 2013) available at <http://en.people.cn/90882/8492161.html>.

¹⁹ Supreme People's Court of the People's Republic of China, available at <http://www.court.gov.cn/zixun-xiangqing-12846.html>

²⁰ *China to Set up Special IPR Courts* SIPO, available at http://english.sipo.gov.cn/news/iprspecial/201409/t20140902_1004060.html.

²¹ *China's supreme court urges efficient trials of IPR cases*, XINHUANET (Nov. 12, 2014), available at http://news.xinhuanet.com/english/china/2014-12/11/c_133848760.htm

²² *Id.*

²³ available at <http://fgk.chinalaw.gov.cn/article/flk/200708/20070800267812.shtml>

²⁴ People's Republic of China Anti-Monopoly Law (promulgated by the Standing Comm. Of the Nat'l People's Cong., Aug. 30, 2007, effective Aug. 1, 2008), available at

<http://fgk.chinalaw.gov.cn/article/flk/200708/20070800267812.shtml>

²⁵ *Id.*

SAIC is charge of issuing the Regulations of the Administration of Industry and Commerce Prohibiting Abuse of Intellectual Property Rights in order to Eliminate or Restrict Competition (draft for comments).²⁶ Article 1 of this Regulations states that for the purpose of protecting competition and stimulating innovation and prohibiting abuse of intellectual property rights used to eliminate or restrict competition, this Regulation is enacted in accordance with China's Anti-Monopoly Law.²⁷ Article 2 states that the China's Anti-Monopoly Law and intellectual property rights protection share the same goal of promoting innovation and competition, improving efficiency, and maintaining both consumer benefits and social public benefits.²⁸

III. STATUS AND ENFORCEMENT EFFICIENCY OF LAW ENFORCEMENT AGENCIES

China has three executive administrative agencies that enforce the Chinese anti-monopoly law. The Ministry of Commerce's (MOFCOM) Anti-Monopoly Bureau regulates mergers and acquisitions.²⁹ SAIC reviews monopolistic agreements, abuse of dominant market position, and abuse of administrative power to eliminate or restrict competitions.³⁰ The National Development and Reform Commission (NDRC) regulates monopolistic activities involving prices.³¹

Beyond that, China established Anti-Monopoly Commission to charge of organizing and guiding the anti-monopoly works.³² The Anti-Monopoly Commission employs the law, economy and others fields experts to build up a counseling group, which offers

²⁶ Antimonopoly Bureau of the State Administration for Industry and Commerce, *available at*

http://www.saic.gov.cn/gzhd/zqyj/201406/t20140610_145803.html.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Ministry of Commerce new "three Confirmation" program approved by the State Council, *available at*

<http://www.mofcom.gov.cn/article/ae/ai/200808/20080805739577.shtml>.

³⁰ *Available at* http://gkml.saic.gov.cn/auto3743/200809/t20080901_112597.htm.

³¹ *Available at* http://xwzx.ndrc.gov.cn/xwfb/200808/t20080821_231803.html

³² Peoples Republic of China Anti-monopoly Law, (promulgated by the Standing Comm. Nat'l People's Cong. Aug 30, 2007, effective Aug. 1, 2008), *available at* <http://fldj.mofcom.gov.cn/article/c/200811/20081105917420.shtml>

expert advices for major problems that need to be solved by the Commission.³³ The Anti-Monopoly Commission of the State Council also makes specific rules on the constitution of Commission, meeting systems, work systems and procedures to guarantee the Anti-Monopoly Commission functions.³⁴

MOFCOM investigated cases involve lots of industries of national economy, including: agriculture, manufacturing, transportation, wholesale and retail trade, information and cultural industry, with most industries mentioned in “Guidance of Accelerating Key Industry Enterprise Merger and Reorganization” published in 2013.³⁵ A scientific and efficient Anti-Monopoly Law enforcement team has been established. From 2008, MOFCOM has accepted more than 800 merger applications, two of which were forbidden and twenty-three of which were conditionally-approved.³⁶

On June 17, 2014, MOFCOM blocked the “P3” vessel-sharing alliance between Denmark’s AP Moeller Maersk, Switzerland's Mediterranean Shipping Company and France’s CMA CGM, despite the deal already approved by U.S. and European regulators.³⁷ This is the second disapproval by MOFCOM since its prohibition of Coca-Cola Co.’s acquisition of Chinese juice maker Huiyuan in 2009.³⁸ On April 8, 2014, MOFCOM approved Microsoft Corp.’s acquisition of Nokia Corp.’s mobile handset

³³ China’s Anti-monopoly Law, *available at*

<http://fldj.mofcom.gov.cn/article/c/200811/20081105917420.shtml>

³⁴ Ministry of Commerce of the People’s Republic of China Anti-monopoly Bureau, *available at*

<http://fldj.mofcom.gov.cn/article/c/200811/20081105917420.shtml> (last accessed Apr. 22, 2014).

³⁵ Ministry of Commerce of the People’s Republic of China Anti-monopoly Bureau, *available at* <http://fldj.mofcom.gov.cn/article/c/>.

³⁶ The State Council Information Office held a antitrust enforcement cases briefing, a record of which is available at http://www.china.com.cn/zhibo/2014-09/11/content_33487367.htm.

³⁷ LIPENG MEI & LEI MEI :5 THINGS YOU SHOULD KNOW ABOUT CHINA’S ANTI-MONOPOLY LAW, LAW360 (Jun. 30, 2014, 3:01 PM ET), *available at*

<http://www.law360.com/articles/553130/5-things-you-should-know-about-china-s-anti-monopoly-law> (last visited May 10, 2015).

³⁸ Decision of Ministry of Commerce on the Prohibition of the Coca-Cola Company's acquisition of China Huiyuan, *available at*

<http://fldj.mofcom.gov.cn/article/ztxx/200903/20090306108494.shtml>.

business, but surprised many by imposing additional conditions on Microsoft's patent licensing practices.³⁹

SAIC's Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau works on competition law enforcement. Its duties focus on formulating specific anti-monopoly and anti-unfair competition measures; carrying out antimonopoly enforcement on the monopoly agreements, abusing of dominant market position, and abusing of administrative powers to restrict competition (excluding the price monopoly behaviors).⁴⁰ In its General Division, compared with NDRC and MOFCOM, SAIC has strong provincial and cities supervision enforcement groups full of enforcement experience. But it should bring in more professionals, because the staff who are specialized on anti-monopoly law are too few in number, limiting the degree of enforcement to some extent by the SAIC system. Relatively speaking, SAIC's enforcement quality is better and its procedures are complete. For example, SAIC's Anti-Monopoly Bureau has conducted training on competition enforcement in cooperation with the European Union and the United States.⁴¹

From August 2008 to the end of 2014, the SAIC and local branches investigated 43 cases of alleged anti-monopoly law violations, concluded 19 investigations, and suspended one investigation.⁴² Two investigations involved foreign-invested companies, while the remaining one case involved Chinese firms or industry associations.⁴³ SAIC is presently investigating Tetra Pak

³⁹ Ministry of Commerce Announcement No. 24 of 2014, *available at* <http://fldj.mofcom.gov.cn/article/ztxx/201404/20140400542415.shtml>.

⁴⁰ Antimonopoly Bureau of the State Administration for Industry and Commerce, *available at* <http://www.saic.gov.cn/fldyfbzdjz/jgsz/> (last accessed Apr. 23, 2014).

⁴¹ William Kovacic, EU and US competition Policy and Implications for China, SAIC (Mar. 11, 2015), *available at* http://www.saic.gov.cn/gsxh/xhyth/dsj/201503/t20150311_153899.html.

⁴² SAIC: *Investigating 13 New Cases*, NBD.COM.CN (Dec. 6, 2014), *available at* <http://www.nbd.com.cn/articles/2014-12-06/881424.html>.

⁴³ Three Sectors Introduce Antitrust Enforcement: there is no selective enforcement, *available at* http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201409/t20140915_148354.html (Sep. 14, 2014).

Company.⁴⁴ SAIC imposed fines totaling RMB 19.7 million in 2013 and 2014 combined, all of which were on Chinese firms.⁴⁵

On July 28, 2014, SAIC performed surprise inspections of four Microsoft offices in China, including offices of Microsoft (China) Co. Ltd. and its subsidiaries in Shanghai, Guangzhou and Chengdu.⁴⁶ SAIC announced that Microsoft was under investigation for possible violations of the Chinese Anti-Monopoly Law regarding compatibility, tying sales, document verification, and other issues because Microsoft did not fully disclose relevant information about its Windows and Office software.⁴⁷

SAIC officers inspected offices of the vice president, senior manager and staffs of Microsoft's marketing and finance department.⁴⁸ SAIC officers copied relevant contracts, financial statements, and internal Microsoft documents, as well as emails from computers and servers. SAIC officers also confiscated two computers.⁴⁹

In 2014, SAIC started in-depth investigation of Tetra Pak's alleged monopolistic behavior in a number of industries including liquid food packaging equipment, packaging materials and raw materials and related businesses.⁵⁰ SAIC issued questionnaires, hired a team of legal and economic experts and technical team, and analyzed surveys.⁵¹ During the process, SAIC required five times

⁴⁴ Tetra Pak's alleged abuse of a dominant market position to initiate an investigation, *available at* http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201307/t20130714_136373.html (Jul. 10, 2013).

⁴⁵ SCIO *see notes and text accompanying supra* note 35.

⁴⁶ Lipeng Mei & Lei Mei, *How to React Chinese Anti-Monopoly, Surprise Inspections*, LAW360 (Aug. 20, 2014, 10:12 AM ET), *available at* <http://www.law360.com/articles/567578/how-to-react-to-chinese-anti-monopoly-surprise-inspections>

⁴⁷ SAIC Task Force Raided Microsoft Offices (Jul 28, 2014), *available at* http://www.saic.gov.cn/ywdt/gsyw/zjyw/xxb/201407/t20140729_147122.html.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ AICs Summary of Antitrust and Unfair Competition Enforcement in 2014, *available at*

http://www.saic.gov.cn/ywdt/gsyw/sjgz/xxzx_1/201501/t20150128_151713.html.

⁵¹ *Id.*

that Tetra Pak provide explanatory material, and met Tetra Pak company executives, lawyers and hire professionals to hear their views 10 times.⁵²

SAIC published all administrative penalty decisions on its website, including penalty decisions in 22 cases.⁵³ In 2015, SAIC published Competition Enforcement Bulletin No. 1 of 2015, which is the first case SAIC suspended and terminated.⁵⁴ In accordance with its anti-monopoly duties, SAIC started an anti-monopoly investigation of Beijing Sports Development Co. for alleged monopolistic behavior on March 19, 2014.⁵⁵ SAIC suspended the investigation on June 3, 2014, and entrusted SAIC (Tianjin City) to monitor the fulfillment of the company's commitments as enumerated in Competition Enforcement Bulletin No. 14 of 2014.⁵⁶ After further investigation, SAIC found that the company fulfilled its promises within the time limit prescribed and did not act in a way that warrants the reopening of the investigation under the law.⁵⁷ After consideration, based on the relevant provisions of the Anti-Monopoly Law of People's Republic of China and Procedural Provisions of the Administrative Organs for Industry and Commerce on Investigation against Monopoly Agreements and Abuse of Dominant Positions ("SAIC Procedural Provisions"), SAIC decided to terminate the investigation on December 24, 2014, and hereby announced this decision.⁵⁸

Additionally, on August 4, 2014, in a separate anti-monopoly investigation, NDRC raided Mercedes-Benz's office in Shanghai and questioned several senior managers.⁵⁹ Two days later, NDRC held a routine conference answering questions regarding the

⁵² SAIC Competition Enforcement Bulletin , available at <http://www.saic.gov.cn/jgzf/fldyfbzljz/>.

⁵³ SAIC Competition Enforcement Bulletin, available at <http://www.saic.gov.cn/zwgk/gggs/jzzf/index.html>

⁵⁴ *Id.*

⁵⁵ SAIC Competition Enforcement Bulletin No. 14 of 2014, available at http://www.saic.gov.cn/zwgk/gggs/jzzf/201406/t20140611_145915.html.

⁵⁶ *Id.*

⁵⁷ SAIC Competition Enforcement Bulletin No. 14 of 2015, available at http://www.saic.gov.cn/zwgk/gggs/jzzf/201501/t20150112_151220.html

⁵⁸ *Id.*

⁵⁹ Lipeng Mei & Lei Mei, *supra* note 45.

ongoing anti-monopoly investigation in the automobile industry, stating that Shanghai Chrysler, Hubei Audi, and twelve Japanese auto companies were involved in monopoly activities for which NDRC would soon announce penalties for.⁶⁰ However, whether Mercedes-Benz committed monopoly activities was still under investigation.⁶¹

The Price Supervision and Anti-Monopoly Bureau of NDRC is one of 33 bureaus within NDRC.⁶² It is responsible for the enforcement of prohibitions against price-related monopolistic behavior under the Anti-Monopoly Law.⁶³ Between August 2008 and summer of 2014, the NDRC and local branched investigated 339 entities.⁶⁴ Of these entities, 33 (10%) were foreign or foreign-controlled companies.⁶⁵ The rest (90%) were state-owned enterprises, private domestic firms, and industry associations.⁶⁶

NDRC investigated many price monopoly cases, both in the cases of price-fixing agreements by operators and industry associations and the cases of abuse of market dominance and administrative power to eliminate or restrict competition. The investigated entities included not only state-owned enterprises and private enterprises, but also foreign-funded enterprises, covering broad sectors such as aviation, books, paper, chemicals, the automotive industry, insurance, telecommunications, medicine, milk

⁶⁰ Twelve Japanese Auto Enterprises Fined 1.235 billion yuan for Implementing Price Monopoly by the National Development and Reform Commission, *available at* http://jjs.ndrc.gov.cn/gzdt/201408/t20140820_622756.html (last accessed May 10, 2015).

⁶¹ Mei & Mei, *supra* note 45.

⁶² National Development and Reform Commission Work Dynamic, *available at* <http://jjs.ndrc.gov.cn>.

⁶³ National Development and Reform Commission new "three Confirmation" program approved by the State Council (Aug. 1, 2008), *available at* http://xwzx.ndrc.gov.cn/xwfb/200808/t20080821_231803.html.

⁶⁴ National Development and Reform Commission :Our Antitrust Investigations Are Not Selective Enforcement, *available at* http://fgs.ndrc.gov.cn/wqfxx/201409/t20140916_625723.html (last accessed May 10, 2015).

⁶⁵ *Id.*

⁶⁶ *Id.*

powder, liquid crystal display panels, wine, gold, and corn seeds.⁶⁷ NDRC's notable investigations include InterDigital in 2013 and Qualcomm (concluded in 2015).⁶⁸ Pursuant to Article 45 of the Anti-Monopoly Law, InterDigital promised that they will conduct concrete measures to eliminate the negative effect of the monopoly conducts within a time limit.⁶⁹ NDRC decided to suspend the investigation in 2014.⁷⁰

Qualcomm, the world's largest supplier of chips for mobile phones, agreed to pay a 6.088 billion yuan (approximately \$975 million) penalty on February 9, 2015, and said it has agreed to split its 3G/4G essential patents separately to other licenses in China.⁷¹ Existing licensees will be able to choose new terms as of January 1, 2015.⁷² The Qualcomm penalty is the highest fine issued by a Chinese Anti-Monopoly Bureau. It is also the most complex case involving IP-related abuse of dominant market position. Qualcomm has since also been investigated by the EU and the US.

IV. DETAILED REVIEW OF THE QUALCOMM CASE

This article next reviews the Qualcomm anti-monopoly case in more detail. On November 25, 2013, NDRC started an anti-

⁶⁷ National Development and Reform Commission Will Further Increase the Price Anti-monopoly Efforts, CHINA SECURITY NEWS (Aug. 8, 2013), *available at* http://news.xinhuanet.com/fortune/2013-08/05/c_125114778.htm.

⁶⁸ National Development and Reform Commission Fined Qualcomm six billion yuan, *available at* http://jjs.ndrc.gov.cn/gzdt/201502/t20150210_663872.html (last accessed May 10, 2015).

⁶⁹ National Development and Reform Commission (NDRC) Suspended IDC Investigation, *available at* http://www.ndrc.gov.cn/gzdt/201405/t20140522_612466.html

⁷⁰ *Id.*

⁷¹ Noel Randewich & Matthew Miller, *Qualcomm to pay \$975 million to resolve China antitrust dispute*, YAHOO FINANCE, *available at* <http://finance.yahoo.com/news/qualcomm-pay-975-million-resolve-030346096.html> (last visited May 10, 2015).

⁷² John Russell, *Qualcomm Hit With \$975M Fine In China Following Antitrust Investigation*, TECH CRUNCH, *available at* <http://techcrunch.com/2015/02/09/qualcomm-china-probe/> (last visited May 10, 2015).

monopoly investigation of Qualcomm.⁷³ On December 12, 2013, NDRC said that it has acquired a lot of evidence of alleged monopoly by Qualcomm, but did not give details.⁷⁴ On February 12, 2014, Qualcomm promised it would deliver a rectification application to suspend the investigation.⁷⁵ NDRC confirmed it received the commitment and would make decision after a further research.⁷⁶ On February 19, 2014, NDRC announced that since last year, industry associations and lawyers reported to NDRC reflecting the implementation of Qualcomm's alleged monopoly prices: "We started the investigation according to the law."⁷⁷ This is the first time this agency officially announced on Qualcomm's anti-monopoly investigation. On April 3, 2014, Qualcomm CEO Derek Aberle visited the NDRC with six deputy presidents and a Chinese lawyer, and exchanged the views on relevant issues.⁷⁸ On July 24, 2014, NDRC said it confirmed Qualcomm monopoly facts.⁷⁹ On August 13, 2014, Anti-monopoly expert Zhang Xinzhu, who Qualcomm retained as an expert, was dismissed from the State Counsel's Anti-Monopoly Commission in violation of the working group discipline.⁸⁰ On February 9, 2015, Qualcomm agreed to pay

⁷³ Luoqiu Yun Tian Feng, *The First Antitrust Case in 2014: Investigation of Qualcomm*, IT TIME WEEKLY (Jan. 26, 2014), available at <http://www.ittime.com.cn/index.php?m=content&c=index&a=show&catid=27&id=7905>.

⁷⁴ President of Qualcomm's Accepted the National Development and Reform Commission Third Time Antitrust Investigation, available at http://jjs.ndrc.gov.cn/gzdt/201407/t20140711_618477.html (last accessed May 10, 2015).

⁷⁵ Qualcomm Promises Rectification and Applies to NDRC to Suspend Antitrust Investigation, available at <http://mobile.people.com.cn/n/2014/0212/c183175-24336048.html> (Feb. 12, 2014).

⁷⁶ National Development and Reform Committee Confirms that IDC and Qualcomm Were Investigated, available at http://epaper.dfdaily.com/dfzb/html/2014-02/20/content_865913.htm

⁷⁷ *Id.*

⁷⁸ Director Xu Kunlin of the NDRC with Qualcomm to Exchange Views on the Anti-monopoly Investigation, available at http://jjs.ndrc.gov.cn/gzdt/201404/t20140403_605787.html (last accessed May 10, 2015).

⁷⁹ President of Qualcomm's Accepted the National Development and Reform Commission Third Time Antitrust Investigation, *supra* note 73.

⁸⁰ Zhang Xinzhu, Antimonopoly Committee of Experts Has Been Dismissed for Disciplinary Reasons, CHINA NEWS (Aug. 12, 2014), available at <http://www.chinanews.com/gn/2014/08-12/6485346.shtml>.

a \$975 million fine as part of a long-awaited settlement, which also includes several changes to Qualcomm's practices in licensing patents for mobile phones sold in China.⁸¹ On February 10, 2015, NDRC held a news conference to announce it imposed a fine of about 6.088 billion yuan for Qualcomm's abuse of dominant market position to eliminate or restrict competition.⁸² NDRC's director general Kunlin Xu held the news conference on the Qualcomm case.⁸³

Based on Article 47 and 49 of the Anti-Monopoly Law, NDRC decided to issue its decision with regards to Qualcomm's abuse of market dominance in the wireless SEP licensing and baseband chip markets. The decision is titled "Ordering Qualcomm to stop its abuse of market dominance with details as follows," and ordered that:

1. Qualcomm should provide a patent list and stop charging patent fees for expired patents when licensing patents to wireless communication terminal manufacturers in China.
2. Qualcomm should cease imposing grant-back conditions on wireless communication terminal manufactures in China to force them to cross-license their patents to Qualcomm for free without paying reasonable considerations.
3. For wireless communication terminal products sold to be used within China, Qualcomm should cease to base its wireless SEPs royalties on the wholesale net sales prices of handset devices while insisting on charging its licensees relatively high patent rates.
4. Qualcomm should stop tie-in sales of non-wireless SEPs

⁸¹ National Development and Reform Commission Fined Qualcomm six billion yuan, *supra* note 67.

⁸² NDRC Held a Media Briefing, *available at* <http://www.c114.net/news/1761/a881930.html> (last accessed May 10, 2015).

⁸³ NDRC Explain It Why Didn't Impose a 10% Penalty, XINHUA FINANCE (Feb. 10, 2015), http://news.xinhuanet.com/finance/2015-02/10/c_127479447.htm.

without justifiable cause when licensing its wireless SEPs to wireless communication terminal manufacturers in China.

5. When selling baseband chips to wireless communication terminal manufacturers in China, Qualcomm should stop imposing unfair terms in licensing agreements, such as forcing them to pay royalties for expired patents, forcing them to cross-license their patents to Qualcomm for free, tying in sales of non-wireless SEPs as a condition for supplies of baseband chips to potential licensees. It should also stop imposing non-challenge clauses as a condition for baseband chip supplies to licensees.

The aforesaid orders shall be also applied to subsidiaries of Qualcomm and other companies that Qualcomm holds actual control of. When transferring its wireless SEPs to other parties, Qualcomm should require that the purchaser should be subject to the aforesaid restrictions of behavior. Qualcomm's licensing of wireless SEPs in China that does not have a significant impact in terms of exclusions of and restrictions on market competition will not be subject to the aforesaid decision.

As verified, Qualcomm's sales in China in 2013 amounted to CNY 76.102bn (the exchange rate should be the average RMB exchange midrate for 2013). Considering that Qualcomm's abuse of market dominance was a severe antitrust violation and had been committed for a long period of time, the NDRC imposed a fine amounting to 8% of its Chinese sales in 2013, which total CNY 6.088bn⁸⁴.

V. CONCLUSION

In summary, China has established a comprehensive administrative enforcement system of intellectual property rights including the legal system and law enforcement system. China's IPR enforcement and litigation systems are professional, extensive and in-depth. After NDRC made the administrative punishment

⁸⁴ National Development and Reform Commission Fined Qualcomm six billion yuan, *supra* note 67.

order in the Qualcomm case, patent holders are warned that they cannot make tying arrangements and commit other abuse of market dominance behaviors to control the market and squeeze out other competitors and downstream businesses. China, just like the United States and the European Union, also needs to establish consistent enforcement standards to protect intellectual property rights while at the same time promoting competition and safeguarding the interests of consumers. The Regulations of the Administration of Industry and Commerce Prohibiting Abuse of Intellectual Property Rights in Order to Eliminate or Restrict Competition will make China's anti-monopoly enforcement more mature and transparent.