

<b>CHINA—MINISTRY OF COMMERCE</b>			
<b>COMPETITION FRAMEWORK</b>			
Competition Law	The Anti-Monopoly Law (“AML”) was passed on August 30, 2007 and it came into force on August 1, 2008. It applies through the country with the exception of the two special administrative regions of Hong Kong and Macau.		
Competition Authority	The AML provides for the establishment of an Anti-Monopoly Commission of the State Council (“AMC”). There are three Anti-Monopoly Law Enforcement Agencies (“AMEAs”): the Price Supervision and Inspection and Anti-Monopoly Bureau (“PSIAMB”) of National Development and Reform Commission (“NDRC”); the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (“AACEB”) of the State Administration for Industry and Commerce (“SAIC”) and the Anti-Monopoly Bureau of Ministry of Commerce (“MOFCOM”) that enforces the merger control regime. The AMC is responsible for organizing, coordinating, and guiding the anti-monopoly work. <b>Website:</b> <a href="http://english.mofcom.gov.cn/departments/fldj2/">http://english.mofcom.gov.cn/departments/fldj2/</a>		
<b>STATUS OF THE COMPETITION AUTHORITY</b>			
<b>Accountability</b>			
Does the Competition Authority have obligations before the executive?	No	X	Obligations to report to the executive on on-going investigations upon request.
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		X	The Competition Authority has to report on an annual basis to the executive.
Does the Competition Authority have obligations before the legislature?	No	X	Obligation to publish an annual report on its activities.
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.
		X	Its activities are monitored by an independent auditor or by oversight committees.
Does the Competition Authority have obligations before the judiciary?	No	X	Decisions of the Competition Authority are subject to judicial review.
<b>Independence</b>			
Are the criteria for appointment and removal of the head/board members clear and transparent?	No		The appointment and removal of head/board members of the Anti-Monopoly Bureau of MOFCOM is the same as other government agencies in China.
Does the executive have powers to decide on specific cases based on public interest?	No		Nothing is outlined in the AML. However, the State Council has ultimate authority.
Does the executive retain decision-making powers over the Competition Authority?	Yes		Everything is up to the State Council.
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	Yes		MOFCOM has the obligation to publish the blocked or conditional decisions on concentration. See article 30 of the AML.
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes		
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No		
<b>GOVERNANCE OF THE COMPETITION AUTHORITY</b>			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Chairman		At the time of writing, Shang Ming heads the Anti-Monopoly Bureau of MOFCOM. A link to the structure of the State Council is listed here: <a href="http://english.gov.cn/links.htm">http://english.gov.cn/links.htm</a>
Are the heads appointed by a minister?	Yes		
Are the heads appointed by representatives of more than one government branch?	No		
There is a fixed period during which removal is prohibited	No		
Is the tenure of the heads renewable?	Yes		Theoretically, like most government officials in China, the tenure can be renewed and the maximum term of the position is 10 years.
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	No		
<b>ARCHITECTURE</b>			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	The AMC is part of a bigger entity.		
<b>POLICY-MAKING AGENTS -DIVERSIFICATION-</b>			

How many agencies are responsible for competition enforcement?	Multiple agencies	As mentioned above, there are three AMEAs: the PSIAMB of NDRC; the AACEB of SAIC and the AMB of MOFCOM.	
What is the scope of the mandate on competition policy enforcement for each of the agencies?	The NDRC enforces the price related rules of the AML; the SAIC enforces the non-price related rules of the AML and the MOFCOM that enforces the merger control regime. As for AMC, it will be responsible for organizing, coordinating and guiding anti-monopoly work. <i>See</i> article 9 of AML provides that AMC's authorities and responsibilities will include research, formulating policy, investigating and evaluating overall competition conditions, drafting and promulgating guidelines and coordinating enforcement. State council appoints the chairman of AMC. While the head of the three agencies are appointed by ministers of MOFCOM, SAIC and NDRC.		
Have the Competition Authority and other agencies signed protocols or memoranda of understanding?	No. However, memoranda have been signed with several countries.		
<b>POLICY DUTIES</b>			
Does the Competition Authority have exclusive mandate on competition or multiple mandates?	Exclusive competition mandate	X	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		<b>Other mandates:</b> Non.	
<b>PORTFOLIO INSTRUMENTS</b>			
<b>Law Enforcement</b>			
Does the Competition Authority have powers to investigate cartels?	No		
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	<i>See</i> AML, article 39.	
Can the Competition Authority investigate <i>ex officio</i> cases?	No		
Does the Competition Authority have powers to accept leniency applications?	No	The leniency policy can only be applied to monopoly agreements. <i>See</i> AML, article 46.	
Does the Competition Authority have powers to accept seek criminal punishment?	Yes	<i>See</i> AML, article 52.	
<b>Advocacy</b>			
Can the Competition Authority issue opinions on draft legislation?	No	Nothing is outlined in the AML.	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No		
<b>Rulemaking</b>			
Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	X	Guidelines on the calculation of fines.
		√	Guidelines on merger control.
		X	Guidelines on the economic analysis of abuse of dominance cases.
<b>Research &amp; Reporting</b>			
Can the Competition Authority carry out market studies?	No	Nothing is outlined in the AML.	
Can the Competition Authority report to the legislature on the results of market studies?	No		

<b>CHINA—SAIC</b>			
<b>STATUS OF THE COMPETITION AUTHORITY</b>			
<b>Accountability</b>			
Does the Competition Authority have obligations before the executive?	No	X	Obligations to report to the executive on on-going investigations upon request.
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		X	The Competition Authority has to report on an annual basis to the executive.
Does the Competition Authority have obligations before the legislature?	No	X	Obligation to publish an annual report on its activities.
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.
		X	Its activities are monitored by an independent auditor or by oversight committees.
Does the Competition Authority have obligations before the judiciary?	No	X	Decisions from the Competition Authority are subject to judicial review.
<b>Independence</b>			
Are the criteria for appointment and removal of the head/board members clear and transparent?	No		
Does the executive have powers to decide on specific cases based on public interest?	No		Nothing is outlined in the AML. However, the State Council has ultimate authority.
Does the executive retain decision-making powers over the Competition Authority?	Yes		Everything is up to the State Council.
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	No		Nothing is outlined in the AML.
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes		
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No		Although the AACEB of SAIC can fine the violations, the fines, according to other regulations, shall be turned over to the State Treasury.
<b>GOVERNANCE OF THE COMPETITION AUTHORITY</b>			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Chairman		At the time of writing, Ren Airong heads AACEB of SAIC.
Are the heads appointed by a minister?	Yes		
Are the heads appointed by representatives of more than one government branch?	No		
Is there a fixed period during which removal is prohibited?	No		
Is the tenure of the heads renewable?	Yes		Theoretically, like most government officials in China, the tenure can be renewed and the maximum term of the position is 10 years.
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	No		
<b>ARCHITECTURE</b>			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Part of a bigger entity		The AACEB of SAIC is a department of SAIC, and its offices are within the building of SAIC. There are 5 divisions within the AACEB of SAIC: the General Office, the Anti-Monopoly Enforcement Division, the Anti-Monopoly Law Guidance Division, Anti-Unfair Competition Division and Case Supervision Coordination Division.
<b>POLICY MAKING AGENTS -DIVERSIFICATION-</b>			
How many agencies are responsible for competition enforcement?	Refer to China—Ministry of Commerce above.		
What is the scope of the mandate on competition policy enforcement for each of the agencies?	Refer to China—Ministry of Commerce above.		
Do sector regulators have competition policy enforcement mandate?	Refer to China—Ministry of Commerce above.		
Have the Competition Authority and other agencies signed protocols or memoranda of understanding?	No		

POLICY DUTIES			
Does the Competition Authority have exclusive mandate or multiple mandates on competition related matters?	Exclusive competition mandate	X	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		<b>Other mandates:</b> N/A	
Is anti-monopoly an important part of the main function of the AMBCEB of SAIC is a department of SAIC?	Yes	The main functions of AACEB of SAIC are: (i) formulating specific antimonopoly and anti-unfair competition measures, (ii) carrying out antimonopoly enforcement, (iii) initiating investigations into unfair competition practices, commercial bribery, (iv) smuggling, and other cases violating economic laws, and (v) supervising the handling of serious and/or material cases. It should also be noted that the anti-monopoly enforcement carried out by the AACEB of SAIC, as a department of SAIC, is focused on non-price related monopoly.	
Does it also function as the Anti-monopoly Committee Office of the State Council?	No	Only the AMB of MOFCOM also functions as the Anti-monopoly Committee Office of the State Council.	
PORTFOLIO INSTRUMENTS			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	The AACEB of SAIC has the power to investigate non-price related cartels.	
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	See AML, article 39.	
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	The AACEB of SAIC is a department of SAIC and has the power to investigate non-price related dominance cases.	
Does the Competition Authority have powers to accept leniency applications?	Yes	The leniency policy is applied to the monopoly agreement and the AACEB of SAIC has the power to investigate non-price related monopoly agreements.	
Does the Competition Authority have powers to accept seek criminal punishment?	Yes	See AML, article 52.	
Would SAIC consult with NDRC when face a violations that is hard to distinguish whether it's a price-related violation or a non-price related violation?	Yes	There is no mention in AML, but the AMEAs are willing to cooperate rather than raise conflict when face problems like this.	
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	No	Nothing is outlined in the AML.	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No		
Rulemaking			
Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	X	Guidelines on the calculation of fines.
		X	Guidelines on merger control.
		X	Guidelines on the economic analysis of abuse of dominance cases.
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	Nothing is outlined in the AML. According to article 9 of AML, the AMC is responsible for organizing the investigations, assessing the overall market competition status, and publishing an assessment report.	
Can the Competition Authority report to the legislature on the results of market studies?	No		
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and to prosecute cases?	Yes		
Does the Competition Authority make guilty findings?	Yes		
Does the Competition Authority impose punishments?	Yes		
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	Yes		
Can the Competition Authority's decisions be appealed to a court?	Yes		
Disaggregated Functions—Prosecutorial Model			
Are there different authorities that make the decision to investigate and to prosecute cases?	No		
Are disputes presented for decision to a separate entity/tribunal?	No		

<b>CHINA—NDRC</b>			
<b>STATUS OF THE COMPETITION AUTHORITY</b>			
<b>Accountability</b>			
Does the Competition Authority have obligations before the executive?	No	X	Obligations to report to the executive on on-going investigations upon request.
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		X	The Competition Authority has to report on an annual basis to the executive.
Does the Competition Authority have obligations before the legislature?	No	X	Obligation to publish an annual report on its activities.
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.
		X	Its activities are monitored by an independent auditor or by oversight committees.
Does the Competition Authority have obligations before the judiciary?	No	X	Decisions of the Competition Authority are subject to judicial review.
		<b>Other obligations/comments:</b> Nothing stated in the AML about the court system, but if there is an objection to the decision made by the PSIAMB of NDRC, a party may apply the administrative review or bring an administrative lawsuit pursuant to the laws. <i>See</i> AML, article 53.	
<b>Independence</b>			
Are the criteria for appointment and removal of the head/board members clear and transparent?	No		
Does the executive have powers to decide on specific cases based on public interest?	No		Nothing is outlined in the AML. However, the State Council has ultimate authority.
Does the executive retain decision-making powers over the Competition Authority?	Yes		Everything is up to the State Council.
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	No		Nothing is outlined in the AML.
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	No		The budget is not regulated in AML, but in other laws, i.e. the budget law of the PRC and other regulations.
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No		Although the PSIAMB of NDRC can fine violations, the fines, according to other regulations, shall be turned over to the State Treasury.
<b>GOVERNANCE OF THE COMPETITION AUTHORITY</b>			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Chairman		At the time of writing, Xu Kunlin heads the price supervision and inspection and anti-monopoly bureau of NDRC.
Are the heads appointed by a minister?	Yes		
Are the heads appointed by representatives of more than one government branch?	No		
Is there a fixed period during which removal is prohibited?	No		
Is the tenure of the heads renewable?	Yes		Theoretically, like most government officials in China, the tenure can be renewed and the maximum term of the position is 10 years.
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	No		
<b>ARCHITECTURE</b>			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Part of a bigger entity		There are 9 divisions within the PSIAMB of NDRC: the General Office, the Legal Affairs Division, Supervision and Guidance Division, Price Inspection Division, Levy Inspection Division, Market Price Supervision and Management Division, Anti-Price Monopoly Investigation Division I, Anti-Price Monopoly Investigation Division II, and Competition Policy and International Cooperation Division.
<b>POLICY-MAKING AGENTS -DIVERSIFICATION-</b>			
How many agencies are responsible for competition enforcement?	Yes		
What is the scope of the mandate on competition policy enforcement for each of the agencies	<i>Refer to China—Ministry of Commerce above.</i>		
Do sector regulators have competition policy enforcement mandate?	No		
Have the Competition Authority and other agencies signed protocols or memoranda of understanding?	No		

POLICY DUTIES			
Does the Competition Authority have exclusive mandate on competition or multiple mandates?	Multiple mandates	X	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		<b>Other mandates:</b> N/A	
Is anti-price monopoly an important part of the main function of the PSIAMB of NDRC?	Yes	The PSIAMB of NDRC is mainly responsible for drafting administrative laws and regulations of price supervision and inspection; guiding and organizing price supervision and inspection, and handling activities and cases related to commodity price, service price and fee collection involving violation of price-related laws by central government agencies, handling price monopoly activities and reconsideration cases and appeals concerning the punishment of price violations. Although the PSIAMB of NDRC is not just focus on the work of anti-price monopoly, it sees anti-price monopoly as an important part of its functions, especially when you consider its organization- 2 Divisions are set for anti-price monopoly.	
Does the PSIAMB also function as the Anti-Monopoly Committee Office of the State Council?	No	It is the AMB of MOFCOM that also functions as the Anti-monopoly Committee Office of the State Council, not the PSIAMB of NDRC.	
PORTFOLIO INSTRUMENTS			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	The PSIAMB of NDRC has the power to investigate price-related cartels.	
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	See AML, article 39.	
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	The PSIAMB of NDRC has the power to investigate price-related dominance cases.	
Does the Competition Authority have powers to accept leniency applications?	Yes		
Does the Competition Authority have powers to accept seek criminal punishment?	Yes	See AML, article 52.	
Would NDRC consult with SAIC when face a violations that is hard to distinguish whether it's a price-related violation or a non-price related violation?	Yes	Nothing is outlined in the AML. However, the AMEAs are willing to cooperate rather than raise conflict when face problems like this.	
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	No	Nothing is outlined in the AML.	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No		
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Can the Competition Authority report to the legislature on the results of market studies?	No		
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and to prosecute cases?	Yes		
Does the Competition Authority make guilty findings?	Yes		
Does the Competition Authority impose punishments?	Yes		
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	Yes		
Can the Competition Authority's decisions be appealed to a court?	Yes		
Disaggregated Functions—Prosecutorial Model			
Are there different authorities that make the decision to investigate and to prosecute cases?	No		
Are disputes presented for decision to a separate entity/tribunal?	No		

