



Llinks Corporate and M&A Bulletin
March 2018

上海
上海市银城中路 68 号
时代金融中心 19 和 16 楼
邮编：200120
电话：+86 21 3135 8666
传真：+86 21 3135 8600

Shanghai
19F&16F, ONE LUJIAZUI
68 Yin Cheng Road Middle
Shanghai 200120 P.R.China
Tel: +86 21 3135 8666
Fax: +86 21 3135 8600

北京
北京市建国门北大街 8 号
华润大厦 4 楼
邮编：100005
电话：+86 10 8519 2266
传真：+86 10 8519 2929

Beijing
4F, China Resources Building
8 Jianguomenbei Avenue
Beijing 100005 P.R.China
Tel: +86 10 8519 2266
Fax: +86 10 8519 2929

香港
香港中环花园道 3 号
中国工商银行大厦 15 楼
电话：+852 2969 5300
传真：+852 2997 3385

Hong Kong
15F, ICBC Tower
3 Garden Road, Central
Hong Kong
Tel: +852 2969 5300
Fax: +852 2997 3385

www.llinkslaw.com

master@llinkslaw.com

“Three in One” Reform of the PRC Antitrust Law Enforcement Agencies

By David Pan | Kevin Huang | Ivy Hong

On 13 March 2018, the China State Council submitted the Institutional Reform Plan of the State Council (the “Plan”) to the ongoing first session of the 13th National People’s Congress for deliberations. According to the Plan, the State Council will establish a state market regulatory administration. The anti-monopoly functions currently performed by the National Development and Reform Commission (the “NDRC”), the State Administration for Industry and Commerce (the “SAIC”), and the Ministry of Commerce (the “MOFCOM”) will be consolidated into the new market regulatory administration. The widely-anticipated reform plan of the PRC Antitrust Law enforcement agencies was ultimately unveiled.

如果您需要本出版物的中文本，
请与下列人员联系：

郭建良: (86 21) 3135 8756
Publication@llinkslaw.com

If you would like other Llinks
publications, please contact:

Roy Guo: (86 21) 3135 8756
Publication@llinkslaw.com

Llinks Law Offices
www.llinkslaw.com

At present, PRC Antitrust Law enforcement agencies take a “1+3+X” model (Please see below Chart 1 for details). Among them:

“1” refers to the Anti-Monopoly Committee of the State Council, which is responsible for the organization, coordination, and guidance of the PRC Antitrust Law enforcement work.

“3” refers to the three agencies that undertake the PRC Antitrust Law enforcement duties as stipulated by the State Council, among which: the

“Three in One” Reform of the PRC Antitrust Law Enforcement Agencies

Bureau of Price Supervision and Anti-Monopoly under the NDRC is responsible for handling price monopoly activities; the Anti-Monopoly & Anti-Unfair Competition Enforcement Bureau under the SAIC is responsible for handling non-price monopoly activities, such as monopoly agreements, abuse of market dominance, and abuse of administrative power to rule out or restrict competition; the Anti-Monopoly Bureau under the MOFCOM is responsible for antitrust review of concentration of business operators.

“X” refers to the industry regulators, such as the China Securities Regulatory Commission, the China Banking Regulatory Commission, the China Insurance Regulatory Commission, etc., as well as the authorized local enforcement agencies of the PRC Antitrust Law.

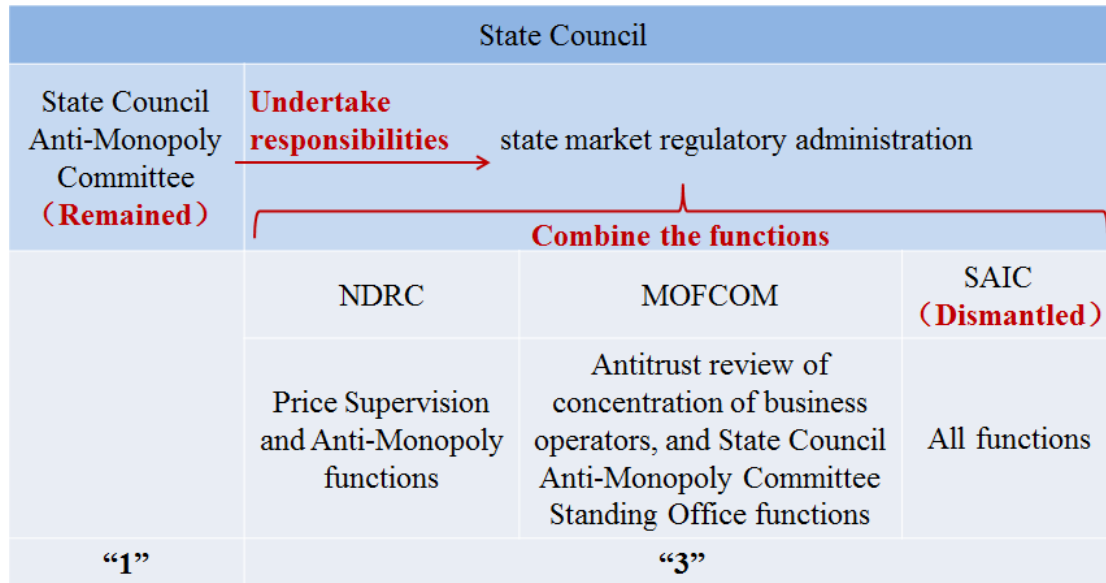
	State Council		
“1”	State Council Anti-Monopoly Committee		
“3”	NDRC	MOFCOM	SAIC
	Bureau of Price Supervision and Anti-Monopoly	Anti-Monopoly Bureau(State Council Anti-Monopoly Committee Standing Office)	Anti-Monopoly & Anti-Unfair Competition Enforcement Bureau

(Chart 1)

The “1+3+X” model reflected the realistic condition at the time when the PRC Antitrust Law was enacted. This model fit the actual situation of “division of specialties and powers” of law enforcement agencies at that time, and the model has played an important role in the early stage of the PRC Antitrust Law enforcement. However, this model does not conform to the new circumstances of the PRC Antitrust Law enforcement. As exposed in the past law enforcement practice, though the NDRC and the SAIC have divided their power authority and responsibility by price factors, one case often contains both price and non-price factors. Consequently, it is ambiguous to identify a competent agency to administer such case. In addition, inconsistency in legal interpretations and enforcement standards taken by multiple law enforcement agencies may also affect the efficiency and authority of the PRC Antitrust Law enforcement. It is a general trend to establish a unified, independent, authoritative, and efficient anti-monopoly law enforcement agency. As a matter of fact, a unified anti-monopoly law enforcement agency has been established in most jurisdictions in the world.

According to the Plan (Please see below Chart 2 for details), the State Council will set up a state market regulatory administration as a direct affiliate of the State Council. The work originally undertaken by the “1” Anti-Monopoly Committee of the State Council will be undertaken by the new administration, and the functions currently exercised by the “3” PRC Antitrust Law enforcement agencies will be consolidated, unified, and vested in the new administration.

“Three in One” Reform of the PRC Antitrust Law Enforcement Agencies



(Chart 2)

This year marks the 10th anniversary of the PRC Antitrust Law’s entry into force. The “3-in-1” reform of the PRC Antitrust Law enforcement agencies is a perfect “birthday gift” for the PRC Antitrust Law, which will certainly place a profound impact on China’s anti-monopoly law enforcement practice. More independent and authoritative, a unified anti-monopoly law enforcement agency will contribute to unifying anti-monopoly law enforcement standards and methods, and to improving the transparency of law enforcement activities. The single unified agency can also help maximally integrating law enforcement experience and professionals in various agencies, and forming a more efficient anti-monopoly law enforcement team, in order to meet the professional requirements and practical needs of the anti-monopoly law enforcement. Moreover, it can avoid law enforcement conflicts, simplify law enforcement procedures and improve law enforcement efficiency.

“Three in One” Reform of the PRC Antitrust Law Enforcement Agencies

Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual Llinks contact.

Author	
David Pan Tel: (86 21) 3135 8701 david.pan@llinkslaw.com	Kevin Huang Tel: (86 21) 3135 8751 kevin.huang@llinkslaw.com
Shanghai	
David Yu Tel: (86 21) 3135 8686 david.yu@llinkslaw.com	Bernie Liu Tel: (86 21) 3135 8678 bernie.liu@llinkslaw.com
Selena She Tel: (86 21) 3135 8770 selena.she@llinkslaw.com	Nicholas Lou Tel: (86 21) 3135 8783 nicholas.lou@llinkslaw.com
Dali Qian Tel: (86 21) 3135 8676 dali.qian@llinkslaw.com	Kenneth Kong Tel: (86 21) 3135 8777 kenneth.kong@llinkslaw.com
David Wu Tel: (86 21) 6043 3711 david.wu@llinkslaw.com	David Pan Tel: (86 21) 3135 8701 david.pan@llinkslaw.com
Elyn Jiang Tel: (86 21) 6043 3710 elyn.jiang@llinkslaw.com	
Beijing	
David Yu Tel: (86 10) 8519 2266 david.yu@llinkslaw.com	Bernie Liu Tel: (86 10) 8519 2266 bernie.liu@llinkslaw.com
Yuhua Yang Tel: (86 10) 8519 1606 yuhua.yang@llinkslaw.com	
Hong Kong (in Association with Vivien Teu & Co LLP)	
David Yu Tel: (86 21) 3135 8686 david.yu@llinkslaw.com	Sandra Lu Tel: (86 21) 3135 8776 sandra.lu@llinkslaw.com