

## Strategic Public Shaming: Evidence from Chinese Antitrust

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**Abstract:** This article examines strategic public shaming, a novel form of regulatory tactic employed by the National Development and Reform Commission (NDRC) during its enforcement of the Anti-Monopoly Law. Based on analysis of media coverage and interview findings, the study finds that the way the NDRC disclosed its investigation is highly strategic depending on the firm's co-operative attitude toward the investigation. Event studies further show that the NDRC's proactive disclosure resulted in significantly negative abnormal returns of the stock prices of firms subject to the disclosure. For instance, Biostime, an infant-formula manufacturer investigated in 2013, experienced -22% cumulative abnormal return in a three-day event window, resulting in a loss of market capitalization that is 27 times the ultimate antitrust fine it received. The NDRC's strategic public shaming could therefore result in severe market sanction that deters firms from defying the agency.

**Key words:** reputation, shaming, antitrust, competition, regulation

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On 9 November 2011, the antitrust bureau of the National Development and Reform Commission (NDRC), formerly known as the Anti-Monopoly and Price Supervision Bureau, made a surprise announcement on China Central Television (CCTV), the Communist Party television channel. NDRC's representative disclosed that the agency had been investigating two large telecommunication firms—China Telecom and China Unicom—for allegedly conducting price discrimination against rival companies (China Telecom and China Unicom Case). This announcement caused a stir and was widely applauded by Chinese intellectuals as a major breakthrough in Chinese antitrust enforcement. There had long been scepticisms about whether the Anti-Monopoly Law (AML), China's first modern antitrust law, would be applied to state-owned enterprises (SOEs).<sup>1</sup> Even if it were to apply to SOEs, conventional wisdom predicted that public enforcement against SOEs is unlikely, given the significant political opposition administrative agencies could face.<sup>2</sup> Thus this case sent a strong signal to the public that the NDRC is determined to go after the most powerful SOEs in China. But the NDRC's high-profile televised announcement also stands in sharp contrast to its practice in other investigations, where the agency has kept its investigations quite low-key. Indeed, on a few occasions the agency announced its decision directly, without any prior disclosure, and in a few cases the agency even concealed its decision.<sup>3</sup> So what is the explanation for the NDRC's varied disclosure practice, and what's the impact on the firms subject to its investigation?

To answer this question, I examined all the closed cases involving publicly listed companies that were investigated by the NDRC during the period of 2008 to 2015. I conducted an exhaustive search of the first media coverage of these cases, and supplemented such analysis with interviews I conducted with the antitrust officials, scholars and lawyers who were involved in some of these cases. I found that the way the NDRC chose to disclose its investigation is highly strategic depending on the firm's co-operative attitude toward the investigation. Using event-study methodology, I measured the stock-price effects of the NDRC's first public disclosure of its investigation. I found that those firms that have significant presence in China experienced a negative and statistically significant abnormal return of their stock prices upon the NDRC's proactive disclosure. Thus, if a firm does not co-operate and quickly yield to NDRC's demand, it could be subject to severe market sanction, resulting in significant equity loss. This suggests that, in addition to legal sanction, the NDRC can leverage market sanction to deter firms from defying its order. That said, strategic public shaming is not a panacea in helping the NDRC overcome the bureaucratic hurdles in tackling all cases. On a few occasions, the NDRC suspended or concealed its investigations due to political opposition it faced from within the bureaucracy.

Chinese antitrust enforcement presents an ideal “laboratory setting” for analyzing how regulators can strategically use public shaming to increase the deterrence effects of its law enforcement. China only began to enforce the AML in 2008. As there were very few precedents available during the first few years of its enforcement, businesses were just starting to learn about the impact of the legal sanctions under the AML. For the same reason, businesses had not fully understood the impact of market sanction as a consequence of a regulator's high-profile media announcement. As the NDRC's pattern of enforcement was

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<sup>1</sup> Zhang, Angela 2015, 198-199.

<sup>2</sup> Ibid.

<sup>3</sup> Zhang, Xingxiang 2015, 12-13 (appendix).

not well established at that time, businesses were not so deterred by the legal sanction under the AML or the public shaming sanction – if they had been, they might not have committed a violation or might have given up defending themselves and quickly surrendered to the NDRC’s request during an investigation, which is indeed what we observed in subsequent investigations.

The study is related to several strands of literature. Abundant research on publicly listed firms has shown that the disclosure of financial misconduct can cause significant negative impact on the stock performance of such firms.<sup>4</sup> Research on the market reactions to antitrust investigations has also identified negative abnormal returns, though the magnitude is much less than those in financial misconduct cases.<sup>5</sup> Financial economists have argued that the decline in stock prices reflects a firm’s loss of value as a consequence of the legal penalty, the loss of reputation and the loss of profits after price adjustment.<sup>6</sup> This study is the first to estimate the impact of announcement of the antitrust investigation on the stock prices of firms subject to investigation in China. Moreover, the fact that the Chinese antitrust agencies would strategically utilize the state media to make a public announcement of its antitrust investigation is a unique phenomenon that has not been observed in any other major antitrust jurisdictions. While public disclosure of antitrust investigation is routine for enforcement agencies in other jurisdictions, the Chinese antitrust enforcement agencies employ it strategically as a mechanism for public shaming.

This study also contributes to the literature on reputational sanction in Chinese administrative law enforcement. In a study of the reputation sanction in the Chinese securities market, Liebman and Milhaupt found that public criticisms issued by the stock exchanges have significant effects on companies and their executives.<sup>7</sup> Similar to Liebman and Milhaupt’s studies, this article provides another concrete and contextualized example of how Chinese government agencies utilize the reputational mechanism to achieve their policy objectives. At the same time, this research identifies a phenomenon unique to antitrust enforcement. In earlier literature, reputation sanction is imposed independently of a firm’s response to the regulatory action. Because the damage would occur anyway, the sanction shouldn’t affect a firm’s incentive to challenge the regulatory act. In the context of Chinese antitrust, however, the imposition of the public shaming sanction is a strategic act conditional on the firm’s reaction, and the magnitude of such sanction depends heavily on the firm’s attitude. If a firm fails to comply with the agency’s demand, the agency could proactively disclose its investigation through state media, which could cause significant loss to its equity. This exerts pressure on the investigated firm to conform.

This study further contributes to the institutionally oriented research on Chinese antitrust law. In previous research, I identified how extralegal factors such as bureaucratic politics play an

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<sup>4</sup> Karpoff, Lee and Martin 2008, 581-611; Armour, Mayer and Polo, Forthcoming.

<sup>5</sup> Bosch and Eckard, 1991, 309-317; Aguzzoni, Langus and Motta, 2007; Broek, Kemp, Verschoor and De Vries, 2012, 231-258; Günster and Dijk 2016, 20-33.

<sup>6</sup> Bosch and Eckard 1991.

<sup>7</sup> Liebman and Milhaupt 2008, 929-983.

important role in driving the enforcement outcome in Chinese antitrust.<sup>8</sup> In this article, I found that the NDRC can strategically utilize market sanction to empower itself to tackle SOEs in China. This innovative form of regulation helps the NDRC overcome the poor governance institutions in China to enhance the deterrent effects of the AML and to propel active antitrust enforcement in China. On the other hand, because the NDRC's actions are seldom challenged in court, it is far from clear whether those antitrust actions that the NDRC brought are efficiency-enhancing in the first place. Meanwhile, the findings in this article refute the long-standing belief that the enforcement of the AML is solely targeted at foreign firms and will never be seriously applied to its SOEs. The utility function of the Chinese government is highly complex and it is misleading to attribute its motivation to enforce the AML as solely driven by protectionist ground.

## I. Pattern of Disclosure

In China, the responsibility to enforce the AML is shared among three administrative agencies. In particular, the Ministry of Commerce (MOFCOM) is primarily responsible for merger control, whereas the NDRC and the State Administration for Industry and Commission (SAIC) concurrently share the responsibility to enforce against anti-competitive conduct.<sup>9</sup> More specifically, the NDRC is in charge of enforcing against price-related anti-competitive conduct, whereas the SAIC is in charge of enforcing against non-price-related anti-competitive conduct. This article focuses on the behaviour of the NDRC, for two reasons: first, the NDRC is the only agency among the three main ones that has proactively employed a media strategy during its enforcement. Second, the NDRC has made constant headlines at home and abroad by bringing actions against prominent domestic and foreign targets in recent years, and its hectic enforcement allows us to identify a pattern of disclosure and examine the impact of public shaming.

According to the AML, antitrust enforcement agencies can publicly disclose their decisions after their investigations.<sup>10</sup> But the law did not make it mandatory for agencies to disclose their decisions, nor did it obligate the agencies to disclose their investigations before releasing their decisions. Hence, the agencies possess significant discretion in deciding whether, when and how to disclose their investigations. Even after a decision is imposed, they have the discretion not to make it public. This stands in stark contrast to the enforcement practice adopted by antitrust agencies in other major jurisdictions. For example, after in-depth investigation, the European Commission (Commission) routinely sends a statement of objection (SO) to the investigated firms. The SO sets out the preliminary position of the Commission regarding the alleged infringements of the investigated firms, thus enabling firms to exercise their rights of defence in writing and orally.<sup>11</sup> Upon the conclusion of the case, the Commission will also publish a press release and announce its decision on its website.

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<sup>8</sup> Zhang, Angela 2014, 671, 684; Zhang, Angela 2015, 195.

<sup>9</sup> Zhang, Angela 2011.

<sup>10</sup> The Anti-Monopoly Law, Art. 44.

<sup>11</sup> European Commission, Commission Notice on Best Practices for the Conduct of Proceedings Concerning Articles 101 and 102, 2011/C 308/06 (2011), paragraph 82.

To investigate the pattern of disclosure by the NDRC, I collected all the antitrust cases that were investigated by the NDRC from the inception of the enforcement of the AML till the end of 2015. I include only closed cases, excluding those that were still pending. This is because there was often no public disclosure of a case until the decision was announced, as explained below. As the purpose of this study is to investigate the stock reactions of the firm subject to disclosure, I exclude those cases that do not involve publicly listed companies. This leaves me with a sample of ten antitrust investigations involving 95 companies. A brief description of each of these cases is provided in Appendix A.

Several features of the cases in the sample are noteworthy. First, all these cases were brought during the period of 2011 to 2015 because the NDRC was preoccupied with capacity building in the first three years after the enactment of the AML and needed to gather the momentum to bring large investigations. Second, these cases are the most visible cases brought by the NDRC due to the prominence of the targets involved and the harsh penalties imposed by the NDRC. Notably, SAIC, the other major antitrust enforcement agency, had only initiated two large antitrust investigations by the end of 2015. Thus, the first few cases that the NDRC brought set important precedents for subsequent enforcement of the AML. Third, all these cases were brought during the tenure of Xu Kunlin, who served as the Director General of the antitrust bureau during from December 2009 to February 2015. Xu, a veteran in charge of price monitoring and supervision in China, is a highly ambitious and resourceful technocrat.<sup>12</sup> After the conclusion of the Qualcomm case, Xu was quickly promoted to other departments within the NDRC. Interviewees note that Xu is adept at using the media to help push forward a case when the investigation reaches a stalemate.<sup>13</sup>

To examine how the NDRC disclosed its investigation in these cases, I conducted an exhaustive search of the public disclosure of the NDRC's investigation using two Chinese-language databases. The first is WiseNews, a leading provider of general Chinese news database. WiseNews collects news reports from 110 general-interest Chinese newspapers published in mainland China. To complement the search results obtained from WiseNews, I conducted the same search for each case using Baidu, the largest Chinese-language search engine. This allows me to identify the first time the media covered the NDRC's investigation and the first player that made such a disclosure. I supplemented the analysis of the media reports with interviews I conducted over the past few years with NDRC officials, legal scholars and lawyers who worked on some of these cases. The interviews I conducted are open-ended, with some over the phone and some face to face in China. Given the sensitive nature of the topic, all these interviews were conducted anonymously. Table 1 below summarizes the NDRC's disclosure pattern during its antitrust investigation.

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<sup>12</sup> Martina, Michael and Miller, Matthew. 2014. "Mr. Confession' and His Boss Drive China's Antitrust Crusade," *Reuters*, 15 September, <http://www.reuters.com/article/us-china-antitrust-ndrc-insight-idUSKBN0HA27X20140915>. Accessed 20 March 2015.

<sup>13</sup> Interview with BJ01, BJ02, BJ03, BJ04, NDRC officials, Beijing, May-June 2016.

TABLE 1: THE NDRC'S DISCLOSURE PATTERN DURING ANTITRUST INVESTIGATION

NDRC		Cases
Proactive Public Announcement on State Media		China Telecom/China Unicom Case, Gold Retailer Case, Infant Formula Case
Passive Disclosure	Reactive Disclosure after Firms' Self-Disclosure	InterDigital Case, Qualcomm Case, Auto Part Cases
	Disclosure without Naming Individual Firms Involved	Japanese Auto Cartel
	No Prior Disclosure and Announcing the Decision Directly	Eye Vision Cases, White Liquor Cases
	No Prior Disclosure and Long Delay in Announcing the Decision	Zhejiang Insurance Case
	No Public Disclosure of either Investigation or Decision	Some Chinese SOEs Cases

Source: various news articles obtained from WiseNews and Baidu

#### i. Passive Disclosure

In the majority of cases, the NDRC adopted a passive approach in disclosing its investigation. For instance, it revealed its investigation after firms' self-disclosures in two abuse of dominance cases involving InterDigital (InterDigital Case) and Qualcomm (Qualcomm Case), as well as a resale price maintenance case involving a number of luxury-car manufacturers and their dealers (Auto Part Cases). In a cartel case involving 12 Japanese auto companies (Japanese Auto Cartel), the NDRC disclosed its investigation prior to the firms' self-disclosure, but did not specify the names of the individual companies involved. In two resale price maintenance cases, one involving Maotai and Wuliangye (White Liquor Case) and the other involving premium optical manufacturers (Vision Care Case), the NDRC announced its decision directly without any prior disclosure of its investigation. In both cases, companies were seen to have actively co-operated with the NDRC's investigation and agreed to rectify their behaviour before the NDRC announced its decisions. Notably, the decision of Maotai only appeared in Guizhou DRC's website briefly and was then quickly removed overnight. NDRC officials note that because Maotai is a local state-owned champion, local officials faced significant pressures to announce this case.<sup>14</sup> In one case, the NDRC delayed announcing the decision until months after the case was completed. On 2 September 2014, the NDRC announced that it had imposed a fine of approximately RMB110 million on a number of insurance companies and an insurance association (Zhejiang Insurance Case).<sup>15</sup> However, the decision had in fact been made more than nine months earlier.

<sup>14</sup> Interview with BJ04, an NDRC official, Beijing, June 2016.

<sup>15</sup> NDRC. 2014. "Zhejiang Baoxian Hangye Weifan Fanlongduan Fa Beichu 1.1yiyuan Fakuan," (The Insurance

A few insiders have indicated that the NDRC has investigated many more cases than those it disclosed in public.<sup>16</sup> For instance, in April 2009 several media outlets reported that five large domestic state-owned airline companies were suspected of fixing the prices of airfares.<sup>17</sup> The NDRC has never made any announcement about any related investigation. But acute observers found that this case was briefly mentioned in an obscure magazine entitled *Price Supervision and Anti-Monopoly Law* (PSAML).<sup>18</sup> The magazine is not widely circulated and is mostly read by government officials responsible for price monitoring and control. According to the reports in the PSAML, the NDRC representatives investigated these domestic airlines and requested rectification of their conduct in August 2009.<sup>19</sup> It further disclosed that the NDRC submitted a report of its investigation to the State Council, which was subsequently reviewed by the then Vice Premier Li Keqiang.<sup>20</sup> According to an NDRC official, no public sanction was imposed on these airlines because the case was “harmonized”, i.e., resolved inside the bureaucracy.<sup>21</sup> Such a phenomenon of “internal dispute resolution” is not uncommon. A scholar’s close examination of the reports published in PSAML from 2009 to 2013 revealed more mysterious omission by the NDRC of its antitrust investigations.<sup>22</sup> These cases involved a wide range of domestic targets, including regional monopolies and large central SOEs.

## ii. Proactive Disclosure

In contrast to the low-key approach it took in most cases, on three occasions the NDRC took a high-profile approach in announcing its investigation on state media. The first case involved two large state-owned enterprises (SOEs) (China Telecom/China Unicom Case). On 9 November 2011, Li Qing, a deputy director general at the NDRC’s antitrust division, appeared on CCTV, publicly announcing its investigation into China Telecom and China Unicom.<sup>23</sup> The NDRC announcement caused a sensation in China. It also caught these two

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Industry Were Fined RMB110 Million by NDRC for Antitrust Violations), [http://www.ndrc.gov.cn/fzgggz/jgjdyfld/jjszhd/201409/t20140902\\_624514.html](http://www.ndrc.gov.cn/fzgggz/jgjdyfld/jjszhd/201409/t20140902_624514.html). Accessed 20 March 2017

<sup>16</sup> Interview with BJ01, BJ02, BJ03, BJ04, four NDRC officials, June 2016; phone interview with a Chinese antitrust scholar, Dec. 2013.

<sup>17</sup> Travel Daily. 2009. “Hangkong Gongsi Lianshou Budazhe Xianlu Longduan,” (Airline Companies Colluded to Fix Prices), <http://www.traveldaily.cn/article/30018>. Access 20 March 2017; Sina. 2009. “Wuda Hangkong Gongsi Beibao Lianshou Zhangjia,” (Five Large Airline Companies Were Revealed to Colluded to Fix Prices), <http://news.sina.com.cn/c/2009-04-22/040117659240.shtml>. Access 20 March 2017.

<sup>18</sup> Zhang, Xingxiang 2015.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Interview with BJ04, an NDRC official. Phone interview with a Chinese antitrust scholar, Dec. 2013.

<sup>22</sup> Zhang, Xingxiang 2015 (such coverage of antitrust enforcement activities in PSMAL was suspended after 2013.)

<sup>23</sup> CCTV. 2011. “Zhongguo Dianxin Zhongguo Liantong Shexian Jiage Longduan” (China Unicom And China Telecom Are Suspected of Price Monopolies), [http://www.china.com.cn/v/zhuanti/2011-11/21/content\\_23971018.htm](http://www.china.com.cn/v/zhuanti/2011-11/21/content_23971018.htm). Accessed 20 March 2017.

SOEs by surprise, and both companies immediately released a clarification statement to their investors in response to the NDRC announcement.<sup>24</sup> As China Telecom and China Unicom form the backbone of the Chinese telecommunication industry, the NDRC experienced significant political opposition from within the bureaucracy when conducting its investigation. In addition to the SOEs themselves, the NDRC faced challenges from the State-Owned Asset Supervision and Administration Commission, the state asset supervisor who was concerned about the potential loss of state assets, as well as the Ministry of Industry and Information Technology, the sector regulator who was concerned that the NDRC was encroaching on its turf.<sup>25</sup> James Wilson, an expert on bureaucracy, has long argued that when the benefits of regulations are dispersed while the costs are borne by a small group, then opponents of regulation have the strong incentive to oppose the regulation.<sup>26</sup> In such circumstances, social measures can only succeed if policy entrepreneurs can mobilize public sentiments to counteract the resistance from opponents.<sup>27</sup> NDRC officials seem acutely aware of such theory. Insiders note that the NDRC's unusual move of a televised announcement was precisely calculated to garner attention and to galvanize public support for its enforcement action.<sup>28</sup> This helps the NDRC win political support from the upper authorities and makes it more difficult for opposing parties to resort to the mechanism of "internal dispute resolution" to resolve this case.<sup>29</sup>

The second case involved a number of domestic and foreign infant-formula manufacturers (Infant Formula Case). On 1 July 2013, CCTV claimed that it had obtained confirmation from the NDRC that the agency had been investigating Biostime and a few other infant-formula manufacturers for conducting resale price maintenance (RPM) in China.<sup>30</sup> Notably, CCTV only named Biostime but omitted the names of the other manufacturers. The CCTV news specifically highlights Biostime, noting that it had a large market share in the premium infant-formula market and had been charging abnormally high prices for its products. The day after CCTV's announcement, *People's Daily* disclosed the names of five more companies who were also involved, claiming that it had obtained confirmation from the

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<sup>24</sup> China Unicom. 2011. "Zhongguo Lianhe Wangluo Tongxin Gufen Youxian Gongsì Chengqing Gonggao"(Public Clarification Notice of China Unicom), <http://www.cninfo.com.cn/finalpage/2011-11-10/60183823.PDF>. Accessed 20 March 2017; China Telecom. 2011. "Zhongguo Dianxin Gufen Youxian Gongsì Gaogong" (Public Notice of China Telecom), [http://www.hkexnews.hk/listedco/listconews/sehk/2011/1109/LTN20111109430\\_C.pdf](http://www.hkexnews.hk/listedco/listconews/sehk/2011/1109/LTN20111109430_C.pdf). Accessed 20 March 2017.

<sup>25</sup> Zhang, Angela. 2015, 218-221.

<sup>26</sup> Wilson 1989, 80-81.

<sup>27</sup> Ibid.

<sup>28</sup> Interview with BJ04, an NDRC official.

<sup>29</sup> Ibid.

<sup>30</sup> CCTV. 2013. "Fazhan Gaigewei Dui Heshengyuan Deng Rufen Qiye Fanlongduan Diaocha" (NDRC Launched An Antitrust Investigation Into Bostime and Other Milk Powder Companies), <http://tv.cntv.cn/vodplay/015c07df1972448e915602c6c74c20b2/860010-1102010100>. Accessed 21 March 2017.

NDRC.<sup>31</sup> Mysteriously, Meiji, Fonterra, and Beingmate, who were at that time also being investigated by the NDRC, were not mentioned in the news. It therefore appears that within the same case, the NDRC exposed the firms under investigation to three different levels of publicity, as shown in Table 2 (below).

According to an NDRC official, such differential disclosure has to do with the firms' level of co-operation rather than the severity of their conduct.<sup>32</sup> That is, if a firm vigorously defended itself and did not quickly admit its guilt, the NDRC would expose the firm to more negative publicity and impose a higher penalty on the company. In this case, Biostime was the most difficult to deal with as the firm fiercely defended its conduct during the investigation.<sup>33</sup> This contrasted with other firms involved in the investigation—an example the official gave is Meiji, which readily co-operated with the agency and even volunteered to submit all the evidence of its resale price maintenance practices to the agency.<sup>34</sup>

TABLE 2: DISCLOSURE PATTERN OF INVESTIGATION IN MILK POWDER CASE

Company	CCTV*	People's Daily**	Severity of Penalty***	Grounds for the fine
Biostime	Yes	Yes	6%	Severe violations, failed to rectify its behaviour
MeadJohnson	No	Yes	4%	Being unco-operative during investigation but proactively rectified its behaviour
Abbott	No	Yes	3%	Co-operative during investigation and rectified its behaviour
Fonterra	No	No	3%	
Dumex	No	Yes	3%	Proactively provided important evidence and rectified its behaviour
Wyeth	No	Yes	0	
Beingmate	No	No	0	
Meiji	No	No	0	

\*CCTV: Whether the firm was mentioned in the CCTV programme

\*\*People's Daily: Whether the firm was mentioned in People's Daily

\*\*\*Severity of Penalty: The severity of penalty is measured by the percentage of the revenue used to calculate the fines imposed on the individual firms.

Source: Various news articles on these cases on filed with the author

The third case involved a number of gold retailers in Shanghai who allegedly colluded to fix prices for gold retailing (Gold Retailer Case) in 2014. *People's Daily*, a Party mouthpiece, was the first to disclose the investigation, claiming that it had obtained confirmation from the

<sup>31</sup> Zhu, Jianhong. 2013. "Fagaiwei Fanlongduan Ju Zhengzai Diaocha Duoqia Naifen Qiye Shexian Jiage Longdong," (NDRC's Antitrust Bureau Is Launching An Antitrust Investigation Into Milk Powder Companies Suspected of Price Monopolies), [http://paper.people.com.cn/rmrb/html/2013-07/02/nw.D110000renmrb\\_20130702\\_4-01.htm](http://paper.people.com.cn/rmrb/html/2013-07/02/nw.D110000renmrb_20130702_4-01.htm). Accessed 21 March 2017.

<sup>32</sup> Interview with BJ04, an NDRC official.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

NDRC as exclusive coverage.<sup>35</sup> Similar to the above two cases, the NDRC appeared to have met with strong resistance during its investigation. During a TV interview, an NDRC official recalled a direct confrontation with the chairman of the trade association, who had orchestrated the cartel.<sup>36</sup> Notably, some of the gold retailers are partly state-owned and, in fact, the Shanghai government used to own all of them.<sup>37</sup> A lawyer involved in this case noted that some of the gold retailers were initially contemplating filing an administrative appeal against the NDRC but ultimately relented.<sup>38</sup>

## II. Impact of Disclosure

Generally speaking, if a publicly listed company has a substantial presence in China, it should have the obligation to inform investors of its involvement in an antitrust investigation since it is a material event. In practice, however, the timing of the disclosure is subject to the discretion of the company. One example is the Infant Formula Case. With the exception of Biostime, listed in Hong Kong, none of the other eight companies – among which seven were listed overseas – made any public disclosures. In fact, some lawyers reportedly tried to solicit interest to launch a class action suit against Mead Johnson for its failure to disclose material facts.<sup>39</sup> Such non-disclosure is not uncommon among Chinese firms either. For instance, in the Zhejiang Insurance Case, none of the insurers made any public disclosure before or after the NDRC's decision. In China Telecom/China Unicom and the Gold Retailer Case, the companies involved didn't inform investors until the NDRC had disclosed the case through state media.

If a publicly listed firm delays or deliberately covers up its involvement in antitrust investigation, it inadvertently gives the regulator significant discretion in influencing its stock performance. When the regulator then discloses such information, it is the first time that the market learns of such news, thus sending a shock to the market and causing turbulence to the firm's stock performance. If, on the other hand, the regulator delays disclosing its investigation, or even conceals its decision, presumably the impact on stock would be significantly reduced. As demonstrated in the following analysis about the Infant Formula Case, even if a firm has made prior disclosure, investors can still glean new information from the regulator's proactive announcement of its investigations and this can also adversely influence the firm's stock performance.

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<sup>35</sup> Wan, Renmin. 2014. "Fagaiwei Diaochu Shanghai Jingjia Chaozhong, She Laofengxiang Yuyuan," (NDRC Is Investigating Price Fixing in Gold Retailing in Shanghai, Laofengxiang and Yuyuan were Involved), <http://finance.people.com.cn/n/2013/0719/c1004-22245568.html>. Accessed 21 March 2017.

<sup>36</sup> Yuan, Jin. 2013. "Fagaiwei Tan Fanlongduan Kunjing: You Xiehui Shanglai Jiu Paizhuozi" (NDRC Discussed The Difficulties of Antitrust Enforcements: Industry Association Refused to Cooperate), <http://www.nbd.com.cn/articles/2013-08-27/768536.html>. Accessed 21 March 2017.

<sup>37</sup> Zhang, Angela. 2015c, 223.

<sup>38</sup> Phone interview with a lawyer involved in this case, Oct. 2013.

<sup>39</sup> Xiao, Wei. 2013. "Zhongmei Lvshi Lianshou Zhengji Shouhairren Meizanchen Kongzao Touzizhe Jiti Susong," (Lawyers Are Calling on Investors To Launch A Class Action Suit Against Meadjohnson), [http://news.xinhuanet.com/fortune/2013-07/30/c\\_125086197.htm](http://news.xinhuanet.com/fortune/2013-07/30/c_125086197.htm). Accessed 21 March 2017.

i. The Market Model

To estimate the effect of the government's disclosure on the value of a firm, I apply the standard event study methodology.<sup>40</sup> According to efficient market hypothesis, the price of the stocks reflects the value to investors of all the publicly available information about the company. Therefore, any news about the fundamentals of the company is immediately absorbed and reflected in the share price. To examine the market reaction to the government's announcement of an investigation, it is important to estimate the stock price that would have prevailed in the absence of the news at the time that the investigation was announced by the NDRC. The difference between the counterfactual return and the actual return represents the abnormal return. Following existing literature on the study of the impact of antitrust investigation on market value, I use a simple market model of returns to calculate a counterfactual return.

The market model is defined as:

$$R_{it} = \alpha_i + \beta_i R_{mt} + \varepsilon_{it},$$

where  $R_{it}$  is the return of security  $i$  at period  $t$ , i.e.,

$$R_{it} = \frac{P_{i,t}}{P_{i,t-1}} - 1$$

and  $R_{mt}$  is the return of the market index at period  $t$ . The error term  $\varepsilon_{it}$  is expected to be mean zero, and the variance equals to  $\sigma^2_{\varepsilon}$ .  $P_{i,t}$  and  $P_{i,t-1}$  are the closing prices for security  $i$  at time  $t$  and time  $t-1$  respectively.

The abnormal return can therefore be defined as:

$$AR_{it} = R_{it} - E(R_{it}|X_i)$$

The daily abnormal returns are summarized over the event window to derive the cumulative abnormal returns (CARs):

$$CAR_{i(T_1-T_2)} = \sum_{T_1}^{T_2} AR_{it}$$

where  $CAR_{i(T_1-T_2)}$  is the cumulative abnormal return for firm  $i$  over the event window ( $T_2$ ,  $T_1$ ). I examine four event windows: a three-day event window  $[-1,1]$ , a seven-day event window  $[-1,5]$ , an 11-day event window  $[-5, +5]$  and a 31-day event window  $[-20, +10]$ . The estimation window dates from  $T_0$  ( $t = -140$ ) to  $T_1$  ( $t = -21$ ) relative to the announcement date  $t = 0$ , including 120 trading days.

The test statistic for the interval ( $t_1$ ,  $t_2$ ) is:

$$t = \frac{CAR_i(T_1, T_2)}{\hat{\sigma}^2 (CAR_i(T_1, T_2))^{1/2}} \sim N(0,1)$$

where

$$[\hat{\sigma}^2 (CAR_i(T_1, T_2))]^{1/2} = (T_2 - T_1 + 1)\hat{\sigma}^2(AR_{it})$$

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<sup>40</sup> Campbell et al. 1996; MacKinlay 1997.

## ii. Stock Reactions

I focus my analysis on the three investigations for which the NDRC proactively disclosed its inquiries. Table 3 presents the abnormal return (AR) on the day (T=0) and on the next day (T=1) of the NDRC's announcement, as well as the cumulative abnormal returns (CAR) of those companies subject to the disclosure in two different event windows. In both the China Telecom/China Unicom and the Gold Retailer Case, companies experienced statistically significant negative abnormal return either on the day or the next day of the NDRC's announcement. This contrasts with the stock reactions in the Infant Formula Case, where the impacts on the individual firms are mixed.

TABLE 3: IMPACT ON STOCK PRICES UPON THE NDRC'S PROACTIVE PUBLIC ANNOUNCEMENT OF INVESTIGATION BY COMPANY AND CASE NAME

Investigation	Company	AR (T=0)	AR(T=1)	CAR (-1, +5)	CAR (-1,+1)
China Telecom/China Unicom	China Telecom	-0.02*	0.01	0.02	0.00
	China Unicom	-0.08***	0.03	-0.05	-0.04
Gold Retailer	Yuyuan Tourist Mart	-0.03*	-0.02*	-0.01	-0.06**
	Lao Feng Xiang	-0.01	-0.04*	-0.11**	-0.07**
Infant Formula	Biostime	-0.01	-0.12***	-0.37***	-0.22***
	Mead Johnson	-0.06***	-0.08***	-0.13***	-0.05*
	Abbott	0.00	0.00	-0.04	-0.02
	Fonterra	-0.01	0.00	0.00	0.00
	Danone	-0.01	-0.01	-0.04	-0.01
	Nestlé SA	0.00	0.00	0.01	0.00
	Beingmate	0.07**	0.05*	0.08	0.11*
	Meiji	0.00	-0.01	-0.01	0.00

\*\*\*Significant at 1% \*\* Significant at 5% \* Significant at 10%

Note:

1. The NDRC announced its investigation of the Infant Formula Case on 1 July 2013, which is a public holiday in Hong Kong. Therefore, T=0 for Biostime is 2 July 2013.
2. These companies listed in Table 3 are listed in different stock exchanges in Hong Kong, Paris, Shenzhen, New York and Tokyo. For the purpose of examining their abnormal return, I use the stock price of their holding companies.

In the Infant Formula Case, Biostime clearly felt the strongest impact from the NDRC's announcement. Although the company had made prior disclosure that it had been subject to antitrust investigation, the NDRC's subsequent announcement still sent a very bad signal to the market. Biostime's stock suffered a cumulative negative abnormal return of 22% upon the NDRC's announcement in the three-day event window and 37% in the seven-day event window. Both results are highly statistically significant. This shows that investors can gain new information from the NDRC's action, even though the government's announcement itself contains no more information than Biostime's own disclosure. Because Biostime was the only firm that was named in the CCTV programme, investors may read this message as a sign that the NDRC had obtained solid evidence of the firm's antitrust violations and that the firm's infringement is very severe. Therefore, the loss of equity may reflect investors' predictions of the legal sanctions, including the potentially high fine that could be imposed under the AML, as well as behavioural remedies formally or informally imposed by the

NDRC. Furthermore, the NDRC announced the news on a CCTV programme which condemned the excessively high prices of Biostime's products, and in subsequent days Biostime found itself lambasted by a slew of Chinese media accusing it of using aggressive distribution tactics to reap abnormal profits. Investors may therefore predict a loss from reputation sanction—that the overwhelming public criticisms targeted at Biostime would result in a loss of trust from consumers and suppliers, thus affecting the firm's sales and future performance.

In addition to Biostime, Mead Johnson also suffered a huge loss upon the announcement. Its stock suffered a cumulative negative abnormal return of 5% upon the NDRC announcement in the three-day event window and 13% in the six-day event window. Both results are statistically significant. However, the stock reactions of Abbott, Danone and Nestlé, which were also mentioned in *People's Daily*, are not as strong. This may have to do with the fact that these companies are large multinational conglomerates and the Chinese investigation only affected a small part of their global businesses. Based on the disclosure from its annual reports, Abbott's revenue from China accounted for 5% of its global revenue in 2013, whereas both Danone and Nestlé's Chinese revenue only accounted for 7% of their overall revenue during that year. Moreover, milk powder is not a major source of revenue for these firms. For instance, income from whole-milk powder business accounted for only 10% of the total revenue of Abbott, 20% of Danone and 14% of Nestlé in 2013. This contrasted with Mead Johnson, which invested heavily in China and derived almost 31% of its global revenue from the mainland market in 2013.<sup>41</sup> Lastly, and not surprisingly, for those firms that were omitted in the news (i.e., Fonterra, Beingmate and Meiji), the NDRC's announcement had little immediate effect on stock prices.

To further investigate the impact of differential disclosure on stock prices, I compared the stock reactions of the only two domestic companies involved in this investigation – Biostime and Beingmate. The former is listed on the Hong Kong Stock Exchange and the latter is listed on the Shenzhen Stock Exchange. The business operations of these two firms are highly similar to each other. Both companies sold exclusively to the mainland Chinese market and both derived the vast majority of their revenue from the sales of infant formula. In particular, milk powder accounted for 93% of Beingmate's revenue in 2013<sup>42</sup> and 82% of the revenue of Biostime in 2013.<sup>43</sup> In terms of market capitalization, Biostime was 60% larger than Beingmate at the time of the announcement.<sup>44</sup> Thus, it seems that the NDRC's investigation would affect a significant portion of the businesses of both firms. Using the 31-day event window, Table 4 below compares the abnormal returns and the cumulative

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<sup>41</sup> Key, Diana. 2016. "Analyzing the Financials of Mead Johnson, A Heavy Hitter in Pediatric Nutrition." <http://marketrealist.com/2016/01/analyzing-financials-mead-johnson-heavy-hitter-pediatric-nutrition/>. Accessed 21 March 2017.

<sup>42</sup>Beingmate. 2014. "Beiyinmei Yingtong Shipin Gufen Youxian Gongsi 2013 Niandu Baogao" (Annual Report 2013 of Beingmate), <http://www.cninfo.com.cn/finalpage/2014-04-09/63808286.PDF> . Accessed 21 March 2017.

<sup>43</sup>Biostime. 2014. "Heshengyuan Guoji Konggu Youxian Gongsi 2013 Nianbao" (Annual Report 2013 of Biostime), [http://www.hkexnews.hk/listedco/listconews/SEHK/2014/0402/LTN20140402614\\_C.opdf](http://www.hkexnews.hk/listedco/listconews/SEHK/2014/0402/LTN20140402614_C.opdf) . Accessed 21 March 2017.

<sup>44</sup> This is calculated on the basis of the market capitalization of both companies on 1 July 2013, the first trading day after the announcement.

abnormal returns of these two firms on the date of the NDRC's announcement and the date of the NDRC's decision.

TABLE 4: COMPARISON OF ABNORMAL RETURN AND CUMULATIVE ABNORMAL RETURN OF BIOSTIME AND BEINGMATE

Event days	AR NDRC Disclosure (July 1 2013)		AR NDRC Decision (August 6 2013)	
	Biostime	Beingmate	Biostime	Beingmate
	t= -20	-0.06***	0.00	-0.01
t= -19	0.02	0.04	0.04	-0.02
t= -18	-0.02	-0.03	0.03	0.02
t= -17	0.01	-0.03	-0.01	0.00
t= -16	-0.02	-0.01	0.08**	-0.03
t= -15	0.00	0.01	0.06	-0.06*
t= -14	0.00	-0.03	-0.05	-0.01
t= -13	-0.01	0.02	-0.01	-0.05
t= -12	0.00	-0.01	0.02	0.01
t= -11	-0.02	0.01	-0.04	0.02
t= -10	-0.01	0.04	-0.01	-0.02
t= -9	0.02	0.00	-0.03	-0.04
t= -8	0.07***	0.03	-0.01	-0.03
t= -7	0.00	-0.01	-0.03	-0.02
t= -6	0.04	-0.01	0.04	0.04
t= -5	-0.03	0.00	0.00	0.01
t= -4	-0.03	0.01	0.02	0.00
t= -3	0.03	0.01	0.02	0.05*
t= -2	0.00	0.01	0.09***	0.00
t= -1	-0.09***	0.00	-0.03	0.00
t= 0	-0.01	0.07**	0.07**	0.01
t= 1	-0.12***	0.05*	-0.02	-0.04
t= 2	-0.19***	0.10***	-0.02	-0.01
t= 3	0.03	-0.07**	-0.03	0.02
t= 4	-0.02	-0.05*	0.00	-0.02
t= 5	0.03	-0.01	-0.02	-0.03
t= 6	-0.01	0.05*	0.03	0.02
t= 7	0.03	-0.04	0.01	-0.03
t= 8	0.02	-0.06**	-0.03	0.04
t= 9	-0.01	0.04	0.08**	0.02
t= 10	0.08***	-0.01	-0.02	-0.01
Event Window	CAR NDRC Disclosure (July 1 2013)		CAR NDRC Decision (August 6 2013)	
	Biostime	Beingmate	Biostime	Beingmate
	(-20; +10)	-0.28*	0.12	0.22
(-5; +5)	-0.41***	0.11	0.09	-0.05
(-1; +5)	-0.37***	0.08	-0.05	-0.09
(-1; +1)	-0.22***	0.11**	0.02	-0.03

\*\*\*Significant at 1%, \*\* Significant at 5%, \* Significant at 10%

Note: Because July 1 2013 is a public holiday in Hong Kong, T=0 is July 2 2013 for Biostime.

On the second trading day after the NDRC's announcement (T=1), Biostime experienced an abnormal return of -12% and a further return of -19% on the third day. Both results are highly statistically significant. Beingmate, which was also investigated but was omitted in the NDRC's disclosure, had a completely different fortune. Its stock prices reacted positively to the NDRC announcement: the abnormal return on the first day of the NDRC's announcement was 7%, followed by 5% and 10% on the second and third trading days. All these results are statistically significant. This suggests that the market was probably not aware of Beingmate's involvement at that time. Because Beingmate is a domestic company, the market might have been mistaken in thinking that the investigation was solely targeted at foreign firms and thus domestic firms could have benefited from the NDRC's intervention. Beingmate's stock prices only started to tumble on 4 July 2013, when the firm publicly admitted its involvement in the case.<sup>45</sup> Indeed, Beingmate's delay in disclosing its involvement prompted some Chinese investors to accuse the firm of defrauding investors in violation of the disclosure requirements under Chinese securities law.<sup>46</sup>

On 7 August 2013, the NDRC released its decision and imposed the heaviest sanction on Biostime. Despite this, the market reacted positively to the news and the firm experienced a positive abnormal return of 7% on the day of the decision. This seems to suggest that the market had earlier overreacted to the NDRC's announcement and had probably overestimated Biostime's legal sanctions. As one executive involved in the Infant Formula Case told the newspaper after the NDRC's announcement of its investigation: "We hope the NDRC will release its decision soon. The sooner it decides, the less impact it will have on our stock performance."<sup>47</sup> At the same time, Beingmate experienced a slight positive abnormal return of 1% on the day of the NDRC's decision, followed by a return of -4% on the next day, even though the company received full leniency and was not subject to any fine. This is another sign that the market was probably unaware of Beingmate's involvement in the investigation and the negative stock reaction reflects the investors' expectation of the loss of profits as a consequence of the need to reduce prices after the investigation.

For completeness, I also investigated the stock-market reactions of the other cases in which the NDRC took a reactive approach in disclosing its investigation. As shown in Table 5 below, the market reactions to the NDRC's announcements in these cases are much weaker than those observed in Table 3 above. This is not surprising. In these cases, the NDRC only confirmed its investigation after firms' self-disclosures. Thus, by the time the NDRC made public disclosures, the market had already adjusted its expectations of the firms' future profits. Furthermore, unlike the televised announcement of its investigation into Biostime,

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<sup>45</sup> Hu, Xiaohong. 2013. "Beiyinmei Chenren Zao Fanlongduan Diaocha" (Beingmate Admitted that It Was Involved in Antitrust Investigation), 5 July, <http://finance.sina.com.cn/stock/s/20130705/082816024813.shtml>. Accessed 21 March 2017.

<sup>46</sup> Pang, Qiangying. 2013. "Beiyinmei Shua Xiao Congming Beizhi Xing Pi Wei Gui" (Beingmate Was Accused of Violating Securities Disclosure Requirements), 6 July, <http://www.ccstock.cn/stock/gongsi/2013-07-06/A1246410.html>. Accessed 21 March 2017.

<sup>47</sup> Bihua, Ye. 2013. "Fagaiwei Shiyi Huishi Mianzao Zhongfa: Shouxian Jiangjia Shuaixian Rencuo," (NDRC Explained Why Wyeth Got Exemptions From Penalties: Wyeth Was The First One To Reduce Price), 8 August, <http://finance.sina.com.cn/chanjing/gsnews/20130808/022816379184.shtml>. Accessed 21 March 2017.

the NDRC made its announcements in routine press conferences, thus attracting much less publicity.

TABLE 5: IMPACT ON STOCK PRICES UPON THE NDRC'S REACTIVE PUBLIC ANNOUNCEMENT OF INVESTIGATION BY COMPANY AND CASE NAME

Case	Company	AR (T=0)	AR(T=1)	CAR (-1, +5)	CAR (-1,+1)
InterDigital	InterDigital	-0.01	0.06	0.08	0.06
Qualcomm	Qualcomm	0.01	0.00	-0.03	-0.01
Auto Part	FAW Group	-0.01	-0.03	-0.03	0.00
	Volkswagen	0.00	0.00	-0.02	-0.02
	Chrysler	0.00	0.00	-0.02	-0.02*
	Mercedes	0.00	0.00	-0.02	-0.02*

\* Significant at 10%

Note: The companies listed in Table 5 were listed in different stock exchanges in New York, Shanghai and Frankfurt. For the purpose of examining their abnormal return, I use the stock price of their holding companies. Notably, FAW-Volkswagen is a joint venture between FAW Group and Volkswagen so their stock returns are presented separately here.

To further assess the impact of the announcement on a firm's value, Table 6 presents the loss of market capitalization during a three-day event window upon the NDRC's proactive announcement in those cases where the NDRC had made proactive announcements and had imposed fines. The loss of market capitalization reflects the investors' prediction of the firm's value loss caused by the antitrust investigation, including the estimate of the fines that the company would receive, the loss of profits resulting from the price reduction, or other behavioural remedies offered to the regulator, as well as reputation sanction. It is difficult to evaluate precisely the reputation effects in these cases, but it is clear that the ultimate fine imposed on these firms is dwarfed by the value loss that these firms experienced upon the regulatory announcement. To illustrate, Biostime suffered an equity loss of almost RMB4.39 billion upon the NDRC's announcement during a three-day event window, which is 26 times larger than the fines that it ultimately received.

TABLE 6: COMPARISON OF VALUE LOSS WITH FINE DURING THREE-DAY EVENT WINDOW UPON THE NDRC'S ANNOUNCEMENT

Case	Company	CAR (-1,+1)	Value Loss (RMB)	Fine (RMB)	Value Loss/Fine
Gold Retailer	Yuyuan	-0.06**	572,978,344	5,019,600	114
	Tourist Mart				
Infant Formula	Lao Feng	-0.07**	258,654,584	3,232,900	80
	Xiang				
	Biostime	-0.22***	4,394,704,508	162,900,000	27
	Mead Johnson	-0.05*	4,831,315,340	203,760,000	24

\*\*\*Significant at 1%, \*\* Significant at 5%, \* Significant at 10%

Note:

1. Market capitalization is calculated as the product of share price and the number of outstanding shares.
2. The value loss is calculated by multiplying the cumulative abnormal returns over the [-1, +1] event window by the market capitalization of the firms on the trading day before the event.

3. The value losses of Biostime and Mead Johnson have been converted into RMB using the historical exchange rate on the event date.
4. China Telecom/China Unicom Case was excluded as the case was ultimately suspended and the NDRC did not impose any fine.

As the NDRC possesses significant discretion in deciding whether, when and how to disclose an investigation, it can potentially use this discretion to its advantage. If a publicly listed firm does not cede to the agency's demand, it could face strategic proactive disclosure by the antitrust agency, resulting in a dramatic equity loss. On the other hand, if a firm readily gives in, the agency might not disclose its investigation, might delay announcing its decision, or might even conceal its decision, thus minimizing the negative impact on its stock performance. Such a strategic move creates powerful incentives for firms to co-operate with the agency and deter them from defending themselves or to challenge the agency in public or in court.

Importantly, these early precedents in Chinese antitrust enforcement have become the focal point<sup>48</sup> for future cases. Lawyers and in-house counsel used them as lessons to “educate” clients as to how they should cope with an NDRC investigation and to warn them against the consequences of a vigorous defence.<sup>49</sup> In subsequent investigations, particularly in those resale price maintenance cases, manufacturers proactively offered significant price reductions in response to the NDRC's investigation in order to show willingness to co-operate with the agency.<sup>50</sup> While this gesture would have been deemed highly risky in other jurisdictions and, indeed, has puzzled foreign antitrust experts,<sup>51</sup> it seems to be a rational decision in the Chinese context. Given the significant discretion that the NDRC possesses, businesses subject to investigation fear not only a potentially higher legal sanction as a consequence of voicing defence, but also significant market loss if the NDRC imposes public shaming sanction. As such, few foreign multinational firms subject to the NDRC's investigation dared to challenge its decisions in court, despite the many grievances they've voiced through their chambers of commerce.<sup>52</sup>

### III. Conclusion

This article examines the pattern of disclosure by the NDRC during the first eight years of its antitrust enforcement and measures the impact of such disclosure on firms' stock performance through event studies. It finds that while the NDRC routinely took a passive approach in disclosing its investigation, it proactively announced its investigation on state

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<sup>48</sup> Schelling 1990.

<sup>49</sup> Interview with BJ06, an in-house legal counsel, Beijing, June 2016. Interview with BJ07, an antitrust lawyer, Beijing, June 2016. Interview with Lon01, a Chinese antitrust lawyer, London, Feb. 2016. Interview with Lon02, a Chinese antitrust lawyer, London, March 2016.

<sup>50</sup> Mitchell, Tom. 2014 “China Antitrust Ruling Blunts Foreign Criticisms,” *Financial Times*. <http://www.ft.com/cms/s/0/61d3f8aa-28ff-11e4-9d5d-00144feabdc0.html#slide0>. Accessed 21 March 2017.

<sup>51</sup> Stefan, Andreas. 2013. “Chinese Milk Powder Case: How Do We Interpret A Price Cut Upon An Antitrust Announcement”, <https://competitionpolicy.wordpress.com/2013/07/16/chinese-milk-powder-case-how-should-we-interpret-a-price-cut-on-the-announcement-of-an-antitrust-investigation/>. Accessed 21 March 2017.

<sup>52</sup> US Chamber of Commerce. 2014; European Chamber of Commerce. 2014.

media in three high-profile cases during the period 2011 to 2013. A common feature of these cases is that the NDRC was met with significant opposition during its investigation, and the agency tried to leverage public opinion to gain political support and to exert pressures on the firms to conform to the agency's demands. Event studies show that in these three cases the NDRC's announcement led to negative and statistically significant abnormal returns of the stock prices of firms subject to such disclosure. Such severe market sanction earns the NDRC the reputation as a tough regulator, deterring firms from defying the agency in future investigations.

As the NDRC is a newly established antitrust agency with very limited capacity and resources, strategic shaming sanction significantly reduces the agency's cost of prosecution. It becomes an important weapon for the agency to push forward its hectic enforcement, even on the basis of dubious legal and economic grounds.<sup>53</sup> That said, there is also a bright side to the shaming sanction in the Chinese context. Chinese SOEs are often sheltered from regulations due to their superior bureaucratic status, thus formal legal sanctions are not as effective on SOEs than on private businesses. However, because many large Chinese SOEs have been listed at domestic or overseas stock exchanges, market sanction is an important constraint faced by these SOEs when they become subject to antitrust investigation. Public shaming thus becomes an alternative mechanism for antitrust regulation of SOEs in China.

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<sup>53</sup> Ibid.

## Appendix A

### Closed Cases involving Publicly Listed Companies by NDRC(2008-2015)

Decision Year	Case Name	Description
2011	China Telecom/China Unicom	In November 2011, the NDRC announced its investigation into China Telecom and China Unicom, alleging that they had conducted price discrimination by charging their rival internet service providers (ISPs) much higher prices than those small ISPs not competing with them. A few weeks later, both SOEs proposed a number of rectifications and requested suspension of the investigation. The NDRC acknowledged the receipt of the proposal and no fine was imposed.
2013	White Liquor Case	The Guizhou Price Bureau held that Kweichow Moutai had conducted resale price maintenance (RPM) in violation of Art. 14 of the AML. Kweichow Moutai was fined RMB247 million, or 1 per cent of the “related” sales revenue in the previous year. The Sichuan Development and Reform Commission similarly fined Wuliangye RMB202 million, or 1 per cent of the “related” sales revenue in the previous year.
2013	Gold Retailer Case	The Shanghai Price Bureau ruled that Shanghai Gold & Jewellery Trade Association organized Shanghai Laofengxiang and four other gold jewellery stores to fix retail prices within strict bounds for gold jewellery products. The Bureau fined the association RMB500,000 and the five stores a total of RMB10.09 million, or 1 per cent of their previous year’s sales.
2013	Infant Formula Case	Nine milk-powder companies were accused of fixing resale prices for distributors and retailers in violation of Article 14 of the AML. The NDRC fined six of these producers a total of RMB668.7 million, ranging from 3 per cent to 6 per cent of the prior year’s revenue.
2014	InterDigital Case	InterDigital was accused of abusing its monopoly power by charging discriminatively high patent licence fees for China's communications-equipment manufacturers, and issuing bundled licence for non-standard essential patents and standard essential patents. InterDigital offered a set of commitments and the case was suspended in June 2014.
2014	Vision Care Case	Seven manufacturers of eyeglasses and contact lenses were accused of conducting RPM, and the NDRC fined five of the manufacturers a total of more than RMB19 million, with rates of either 1 per cent or 2 per cent of the previous year’s sales.
2014	Japanese Auto Cartel	The NDRC announced that 12 Japanese companies had held frequent discussions to set and influence pricing of vehicles, auto parts and bearings. Hitachi and Nachi-Fujikoshi Corporation obtained full leniency from fines due to their collaboration, but other companies were subject to fines totalling over RMB1.2 billion, ranging between 4 and 8 per cent of the companies’ previous year sales.

2014-2015	Auto Cases	Part	<p>The Hubei Price Bureau announced that FAW-Volkswagen had conducted RPM with its dealerships. The Bureau fined FAW-Volkswagen RMB248.58 million. It also fined eight Audi dealerships RMB29 million.</p> <p>The Shanghai Price Bureau announced that Chrysler had conducted RPM with its dealers and fined Chrysler RMB31.68 million.</p> <p>The Jiangsu Price Bureau announced that Mercedes-Benz had conducted RPM with its dealers and fined the company RMB350 million.</p> <p>The Hubei Price Bureau announced that four BMW dealerships had been involved in RPM practices. The bureau fined the dealerships a collective total of RMB1.63 million.</p> <p>Guangdong DRC announced that Dongfeng-Nissan had conducted RPM practices and fined Dongfeng-Nissan RMB123 million. It also fined 17 dealerships a total of RMB19 million.</p>
2014	Zhejiang Insurance Company Case		<p>The NDRC announced that the Zhejiang Insurance Industry Association had organized 23 insurance companies to fix auto insurance prices. The NDRC fined the Association and companies a total of RMB110 million.</p>
2015	Qualcomm		<p>The NDRC found that Qualcomm abused its dominant market position in the licensing of standard essential patents concerning wireless telecommunication and baseband chip technologies. It imposed a number of behavioural remedies on Qualcomm and a fine of RMB6,088 million, or 8 per cent of its sales revenue in 2013.</p>

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