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## NDRC's Probe of the Foreign Finance Sector May Signal Increased Antitrust Enforcement Risks Related to SSA Market and Beyond

Recent press reports in China have indicated that China's National Development and Reform Commission (NDRC), one of China's three antitrust regulators,<sup>1</sup> is launching an inquiry into firms in the foreign finance sector to determine if they have engaged in price fixing. While the NDRC has not released any public information regarding the probe, local sources note that it is likely to be in its early stages and related to possible manipulation in the trading of so-called supranational, sub-sovereign and agency (SSA) bonds.

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### SSA Bonds

SSA bonds are issued by sovereigns, supranational institutions such as the World Bank or the Asian Development Bank, and agency borrowers such as government-backed policy banks. The size of the SSA market is substantial, reportedly exceeding US\$9 trillion. Because of the state-backed nature of the SSA bonds, they often carry benchmark effects on other debt instruments.

In December 2015 and February 2016, the U.S. Department of Justice (DOJ), the U.K. Financial Conduct Authority (FCA) and the European Commission respectively launched investigations into four traders of SSA bonds for possible manipulation of bond prices. The investigations are still ongoing and have reportedly escalated in the past months as the U.S. and U.K. authorities have sought to interview the implicated traders. In prior investigations into the rigging of the London Interbank Offered Rate (LIBOR), a major benchmark interest rate, the U.S. and U.K. authorities secured more than US\$9 billion in fines. The DOJ and FCA's current probes, however, are reportedly not targeting institutional wrongdoing but focus on the small group of four SSA bond traders, who worked at different multinational banks and may have shared information and agreed on prices in online chatrooms.

In China, multinational banks may also witness an increased interest from the local antitrust regulators in the trading of SSA bonds. Starting in 2017, China's state-owned banks have participated in the SSA market much more actively in order to support China's primary diplomatic initiative, "One Belt, One Road" (OBOR). In the past four months, Bank of China and two of the three major policy banks in China, China Development Bank (CDB) and the Export-Import Bank of China (Exim Bank of China), each raised billions of dollars in offshore SSA markets to fund projects under the OBOR initiative.<sup>2</sup>

<sup>1</sup> The other two antitrust regulators are the Ministry of Commerce (MOFCOM) and the State Administration of Industry and Commerce (SAIC).

<sup>2</sup> iMarkets, Bank of China issued bonds to raise US\$3B for "One Belt, One Road," April 14, 2017, Phoenix Finance. See China Development Bank, "CDB Hong Kong successfully issued US\$3B bonds denominated in both USD and HKY in the international market," CDB News Center, February 2017. Also see The Export-Import Bank of China, "Exim Bank of China successfully issued bonds denominated in both USD and EUR overseas," March 8, 2017, Exim Bank of China News.

## NDRC Enforcement in the Financial Sector

In recent years, the NDRC has led headline-grabbing antitrust enforcement actions against foreign companies and their joint ventures in China and imposed significant fines,<sup>3</sup> and it has long hinted that the finance sector is on its enforcement radar. As early as August 2013, the NDRC announced that its next areas of enforcement would be the automotive, telecommunications, banking, and petroleum industries.<sup>4</sup> And in both 2016 and 2017, the NDRC named the finance sector among its top antitrust enforcement priorities.<sup>5</sup>

While no enforcement actions have yet been announced publicly, that may not be for lack of interest on the part of the NDRC. Instead, the answer may lie in the fact that the Chinese government has only recently begun implementing interest rate marketization. In an August 2013 interview, the Director General of the Price Supervision and Anti-monopoly Bureau explained that any antitrust enforcement action of price-fixing would depend on such marketization. Given the Chinese State Council's recent guiding opinion to the NDRC underlining the marketization of interest rates/currency exchange rates as a key task in 2017, the moment for marketization of rates in the domestic market—and the long-promised enforcement in the financial sector—seems likely to have arrived.<sup>6</sup>

For a number of years, antitrust regulators at the NDRC have been following the investigations carried out by its foreign counterparts against multinational banks. In the meantime, the NDRC regulators have been making efforts to facilitate closer cooperative relationships with antitrust authorities in jurisdictions like the U.S., EU and U.K. In order to promote communication and cooperation, the NDRC signed antitrust memorandums of understanding (MOUs) with the U.K. Office of Fair Trading (OFT, the predecessor agency of the FCA) in January 2011, with the DOJ and U.S. Federal Trade Commission (FTC) in July 2011, and with the EU Directorate-General for Competition (DG COMP) in September 2012. In April 2016, to exchange information and views on antitrust developments and priorities, high-level officials from the NDRC and the other two Chinese antitrust enforcement agencies traveled to Washington, D.C., and participated in a two-day-long bilateral meeting with officials from the DOJ's Antitrust Division and the FTC. This was the third high-level bilateral meeting since the signing of the MOU. More recently, on March 22, 2017, the NDRC and the EU DG COMP co-hosted the 14th EU-China Competition Week in Beijing. Via these channels, the NDRC appears positioned to be well informed about the global enforcement actions related to various financial instruments, including SSA bonds.

If the NDRC determines that any manipulation has an impact on the Chinese market or on the offshore market conditions under which Chinese banks issue bonds, it is very likely to fold the identified manipulation into ongoing or potential probes of multinational banks.

Ropes & Gray's litigators were actively involved in global criminal investigations of alleged collusion among multinational banks in the setting of LIBOR and other benchmark interest rates, and alleged manipulation of FX-related products, and are closely monitoring developments in SSA-related investigations. If you would like to discuss the foregoing or any related investigation matters, please contact [Michael McGovern](#), [Marc Berger](#), [Mimi Yang](#), or [Kaede Toh](#), your usual Ropes & Gray advisor, or any attorney in our leading [Securities & Futures Enforcement](#) or [Antitrust](#) practices.

<sup>3</sup> Many of the enforcement actions implicated price-fixing issues by foreign automobile makers, including SAIC General Motors (2016; fined US\$29 million); Daimler AG's Mercedes-Benz (2015; fined US\$57 million); FAW-Volkswagen Sales Co. (2014; fined US\$40.5 million); and Chrysler (2014; fined US\$5.2 million).

<sup>4</sup> BBC News, China's NDRC will expand its scope of investigation, Aug. 15, 2015, BBC China.

<sup>5</sup> The Price Supervision and Anti-monopoly Bureau, 2016 Price Supervision and Anti-monopoly Work Priorities, Feb. 2016. 2017 Price Supervision and Anti-monopoly Work Priorities, Mar. 2017.

<sup>6</sup> See Notice regarding the opinion on the priorities of deepened economic reforms in 2017, approved by the State Council and transferred to the National Development and Reform Commission, Apr. 13, 2017.