



## I. Hot Topic

### 1. A Blacklist of Unreliable Foreign Entities to Be Released to Protect Chinese Company's Interest in the US-China Trade War

With the US-China trade war suddenly escalating, on May 31, 2019, the spokesman of PRC Ministry of Commerce ("MOC") made an announcement in a press conference that China is contemplating to release a blacklist of unreliable foreign entities damaging the interests of Chinese companies ("Blacklist") in the near future.

Four factors to decide whether a foreign entity is regarded as an "Unreliable Entity" are further explained by MOC on June 4, 2019 via its official website<sup>1</sup>, which include:

1. Whether the foreign entity has adopted discriminatory measures (e.g. blockade or supply cut) against Chinese entities;
2. Whether the foreign entity violates market rules or contract spirit for non-commercial purposes;
3. Whether it causes material damage to Chinese entities or industries; and
4. Whether it poses actual or potential threats to national security.

MOC also states that administrative measures shall be imposed on the foreign entity on the Blacklist pursuant to PRC Foreign Trade law, PRC Anti-monopoly Law, PRC State Security Law and other related laws and regulations. In addition, entities on the Blacklist are entitled to go through certain investigation procedures and be given the rights to defend themselves<sup>2</sup>. However, the details of such measures are not clear yet and are said to be rolled out soon.

Yesterday, on June 13, 2019, the spokesman of MOC make a further statement in relation to the Blacklist<sup>3</sup> that "there is no need for foreign companies to worry about the Blacklist if they fully abide by the China's legislations, market rules and the contract spirit. Also, China will keep optimizing its business environment and safeguarding the rights and interests of all types of companies".

### 2. China Issued 5G Licenses for the First Time and Welcomes Foreign Investors

Any news concerning when and where the 5G technology will be used for commercial use will have a huge impact on commercial environment all over the world.

On June 6, 2019, just last week, China issued its 5G licenses (a kind of Basic Telecommunication Services license<sup>4</sup>) to four companies for the first time, which are China Mobile, China Telecom, China Unicom and China Broadcasting Network Corp.

Comparing the previous plan to commercialize the technology in 2020, this move marks an accelerated push by China in 5G application. One of the licensed companies, China Mobile, stated that its 5G services will be in use in more than 40 cities in mainland China by the end of September 2019. The licensing of 5G is said to be a key step for Chinese market in the telecom sector and helps embrace industrial upgrades as well as boosts economic growth.

During the interview after the licensing ceremony, the Minister of Industry and Information Technology Miao Wei said that China welcomes more foreign companies or investors<sup>5</sup> to join the China's 5G market and continue to deepen cooperation with local firms.

(<http://www.miit.gov.cn/n1146290/n1146397/c6992938/content.html>)

## II. Case

### Beijing Internet Court Voids Contract for Artificially Increasing Online Views

Beijing Internet Court (the "Court") was opened in September 9, 2018 as authorities step up measures to protect business transactions, personal information, and intellectual property online. Since then, the Court has given jurisdiction over series of internet-related disputes. Recently, the Court adjudicated its first case about makers of fake online views and voided the contract for that it damaged public interests and disturbed the cyberspace order.

The number of online views is a factor for netizens to evaluate if an online product/service is useful or not. The dispute was arising out the contract for artificially increasing online views. The defendant, Xu, made a contract with the plaintiff, Chang, to artificially increase views of an online game. The defendant paid part of payment of the contract to the plaintiff but refused to pay the rest. So, the plaintiff took this dispute to the Court.

In the judgement<sup>6</sup>, the Court ruled that the contract was invalid pursuant to Art.52(4) of the Contract Law in China<sup>7</sup>. Zhang Wen, the presiding judge of the case, explained that fake views in this case was a kind of fraud, misleading users and bringing disorder to the online business environment which means that the contract damaged the public interest.

Apart from the judgment in which all the claims from the plaintiff was rejected by the Court, an independent Decision<sup>8</sup> was also issued to order both parties to hand over their illegal gains to the court. After that, the Court sent judicial suggestions to the city's security bureau and the municipal market regulation administration suggesting them to increase supervision and law enforcement to further regulate online business environment.

This case is said to be a crucial step to regulate internet business environment and to protect the credibility in the cyberspace by enforcing strict control on the fake online views.

([http://english.court.gov.cn/2019-06/05/content\\_37477432.htm](http://english.court.gov.cn/2019-06/05/content_37477432.htm))

1. <http://coi.mofcom.gov.cn/article/y/gnxw/201906/20190602869699.shtml>

2. [http://china.cnr.cn/yaowen/20190602/t20190602\\_524635412.shtml](http://china.cnr.cn/yaowen/20190602/t20190602_524635412.shtml)

3. <http://www.mofcom.gov.cn/xwfbh/20190613.shtml>

4. According to Classification Catalog of Telecommunication Service, telecommunications are divided into basic telecommunications services and value-added telecommunications services.

Basic telecommunications services: the business of providing public network infrastructure, public data transmission and basic voice communications services.

Value-added telecommunications services: the telecommunications and information services provided through the public network infrastructure.

The current applicable 4G business (fourth generation digital cellular mobile communication services) is classified under A12 of Basic Telecommunication Service.

5. According to updated 2018 Special Administrative Measures for Access of Foreign Investment (Negative List 2018), foreign investors are allowed to invest in basic telecommunication business now, however, the basic telecommunication business must be controlled by the Chinese party.

6. Judgment: <https://www.bjinternetcourt.gov.cn/cac/zw/1559553307438.html>

7. Contract law: Article 52 "A contract shall be null and void under any of the following circumstances: 4. the public interests are damaged"

8. Decision: <https://www.bjinternetcourt.gov.cn/cac/zw/1559553911709.html>

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