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MIIT and Shanghai Government Confirm Telecoms Market Opening in China (Shanghai) Pilot Free Trade Zone

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Following issuance over the last several months of more general policy statements promising liberalized foreign investment rules applicable to the telecommunications sector within the China (Shanghai) Pilot Free Trade Zone ("SHFTZ"), the Ministry of Industry and Information Technology and the Shanghai Municipal People's Government on January 6, 2014 jointly issued the *Opinions on Further Opening Up Value Added Telecommunication Services to Foreign Investors in China (Shanghai) Pilot Free Trade Zone*

(关于中国(上海)自由贸易试验区进一步对外开放增值电信业务的意见; the "Opinions").

Key provisions of the Opinions include the following:

- In regard to information services and storage and forwarding services, which were opened to foreign
 investment following commitments to the WTO but subject to a 50% cap on foreign shareholding, foreign
 shareholding may now exceed 50% (within information services, this relaxation applies only to app stores).
- Call center services, domestic multiparty telecommunications services, Internet access services and
 domestic Internet virtual private network services are newly opened for foreign investment within the
 SHFTZ. The Opinions further provide that foreign shareholding in domestic Internet virtual private network
 services is subject to a 50% cap but with no such cap applicable to the other three service categories.
- Online data processing and transaction processing services (operational E-commerce) are subject to a 55% cap on foreign shareholding.
- The Opinions specify that in order to engage in the foregoing services, an enterprise must be registered and
 have its servers installed within the SHFTZ. They also state that, while Internet access services may only be
 offered within the SHFTZ, the other services may be offered nationwide.
- The Opinions contemplate the suspension of the application of the Provisions for Administration of Foreign Invested Telecommunication Enterprises (《外商投资电信企业管理规定》; the "FITE Provisions") within the SHFTZ and call for the formulation of pilot administrative measures, along with simplified approval procedures and shortened approval periods. This provision of the Opinions is backstopped by a State Council document, also issued January 6, 2014, formally suspending the FITE Provisions, along with a raft of other foreign investment regulations.
- Consistent with the policy requirement that the market liberalization not have an adverse effect on network security, the Opinions call for the adoption of a number of safeguard measures, including improving collection

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and analysis of information and specifying requirements for network infrastructure, data resources and protection of user data.

Morrison & Foerster continues to monitor regulatory developments in the SHFTZ relevant to international companies in the telecommunications and other sectors.

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