

China Monthly Antitrust Update

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Legislation

Anti-Unfair Competition Law Amendment Proposes to Add "Relative Advantage" Clause

On November 22, 2022, the State Administration for Market Regulation (“SAMR”) released the *Anti-Unfair Competition Law of the People’s Republic of China (Revised Draft for Comments)*. The *Anti-Unfair Competition Law* has been in force since 1993 and was revised twice in 2017 and 2019. The draft has four main aspects: first, to improve the rules against unfair competition in the digital economy, second, to supplement and improve the existing unfair competition types, third, to add new types of unfair competition, and fourth, to improve the legal liability.¹

SPC Revises Judicial Interpretation of Antitrust Civil Litigation

On November 18, the Supreme People’s Court (“SPC”) issued the *"Provisions of Supreme People's Court on Several Issues Relating to the Application of Law in the Trial of Monopolistic Civil Dispute Cases (Draft for Public Comments)"* and sought public comments. The draft is formulated on the basis of the 2012 *"Provisions of Supreme People's Court on Several Issues Relating to the Application of Law in the Trial of Civil Dispute Cases Arising from Monopolies"*.²

¹ https://www.samr.gov.cn/hd/zjdc/202211/t20221121_351812.html

² <https://www.court.gov.cn/zixun-xiangqing-380101.html>

Authorities

SAMR Publishes 2022 Special Enforcement Action Cases to Curb Abuse of Administrative Power to Exclude and Restrict Competition (Third and Fourth Batch)

On November 22 and November 25, 2022, SAMR published a total of 25 cases of abuse of administrative power to exclude and restrict competition in 2022 (the third and fourth batch), involving Gansu, Yunnan, Jiangxi, Qinghai, Henan, Shanghai, Anhui, Hubei, Ningxia, Henan, Heilongjiang, Tianjin, Fujian provinces.³

Guangxi Releases Ten Typical Cases of Anti-Monopoly and Anti-Unfair Competition

On November 25, Guangxi Administration for Market Regulation released ten typical cases of anti-monopoly and anti-unfair competition. In recent years, Guangxi Administration for Market Regulation has actively promoted the strengthening of fair competition review, the special action of "Breaking the Wall" to stop the abuse of administrative power, and the special law enforcement action against unfair competition, maintaining the order of fair competition in the market and protect the rights and interests of consumers.⁴

The CPC Central Commission for Discipline Inspection and the National Commission of Supervision Issue an Article: *Supervision to Enhance the Effectiveness of Anti-Monopoly Regulation and Enforcement*

On November 24, the CPC Central Commission for Discipline Inspection ("CCDI") and the National Commission of Supervision ("NCS") of the PRC website issued an article *Supervision to Enhance the Effectiveness of Antitrust Supervision and Enforcement*, stating that since the first anniversary of the establishment of the National Anti-Monopoly Bureau, the Discipline Inspection and Supervision Office of the CCDI and NCS at SAMR followed up on the supervision of anti-monopoly regulation and enforcement, insisted on precise detection and problem solving, promoted the concreteness, precision, and normalization of political supervision, and bring the antitrust work to a the new level.⁵

Shandong Issues the First Provincial Anti-Monopoly Administrative Law Enforcement and Judicial Interface Collaboration Opinions

On November 22, Shandong Administration for Market Regulation, the High People's Court of Shandong Province and People's Procuratorate of Shandong Province jointly issued the

³ https://www.samr.gov.cn/jzxts/tzgg/qlpc/202211/t20221122_351854.html

⁴ https://mp.weixin.qq.com/s/zEaY23xZ01knv95Eke86Cg?scene=25#wechat_redirect

⁵ https://www.ccdi.gov.cn/yaowenn/202211/t20221124_232837_m.html

Implementation Opinions on Strengthening the Collaboration Between Anti-Monopoly Administrative Law Enforcement and Justice to further improve the mechanism of coordination between anti-monopoly law enforcement and justice to form joint efforts.⁶

Jiangxi Administration for Market Regulation Issues "Anti-monopoly Compliance Guidelines on the Digital Economy of Jiangxi Province"

On November 17, Jiangxi Administration for Market Regulation issued the "Anti-monopoly Compliance Guidelines on the Digital Economy of Jiangxi Province" ("**Guidelines**"). The Guidelines is aligned with the new *Anti-Monopoly Law*, highlighting the characteristics of the digital economy with systematic, operational, and guiding nature.⁷

Seminar on Fair Competition Policy of the Expert Advisory Group of the Anti-Monopoly Committee of the State Council Held in Beijing

On November 17, a seminar on fair competition policy of the Expert Advisory Group of the Anti-monopoly Committee of the State Council was held in Beijing. The seminar focused on the theme of "Enhancing the effectiveness of competition regulation in the digital economy and better creating a fair competition business environment", and discussed topics such as the implementation and improvement of the review of concentration of undertakings and fair competition review system.⁸

Deputy Director of SAMR Meets with the President of the US-China Business Council and Representatives of U.S. Enterprises to Conduct In-Depth Exchanges on Anti-Monopoly Enforcement

On November 16, Pu Chun, deputy director of SAMR, met with Craig Allen, chairman of the US-China Business Council, and representatives of relevant U.S. enterprises. The two sides conducted in-depth exchanges on issues such as U.S.-China economic and trade relations, building a unified market, registration, credit regulation, anti-monopoly law enforcement, food safety and national standard strategy.⁹

Shanghai Administration for Market Regulation Issues 6 Anti-monopoly Guidelines

On November 14, Shanghai Administration for Market Regulation issued six guidelines, including *Guidelines on Concentration Notification of Undertakings in Shanghai*, *Guidelines on Cooperation with Anti-Monopoly Investigations*, *Guidelines on Leniency for Horizontal Monopoly Agreement*, *Guidelines on Simple Procedures for Concentration of Undertakings*, *Guidelines on Name of*

⁶ <http://mt.cmrnn.com.cn/zggsb/20221124/349345.html>

⁷ http://amr.jiangxi.gov.cn/art/2022/11/17/art_22493_4225088.html

⁸ <https://www.ccn.com.cn/Content/2022/11-21/1517321840.html>

⁹ https://www.samr.gov.cn/xw/zj/202211/t20221116_351726.html

Concentration Notification of Undertakings, and Guidelines on the Calculation of Turnover in the Concentration Notification of Undertakings of Financial Industry. ¹⁰

National Anti-monopoly Bureau: Implementing the Antimonopoly Law, Transforming the Advantage of Socialist Rule of Law into the Effectiveness of Competition Governance

On November 14, the National Anti-Monopoly Bureau published an article titled *Implementing the Anti-Monopoly Law Transforming the Advantages of Socialist Rule of Law into Competition Governance Effectiveness*, pointing out that it is necessary to implement the Anti-Monopoly Law, transform the advantages of the socialist rule of law into the effectiveness of competition governance, create a unified, open, competitive, and orderly market system, and promote higher quality and more efficiency, fairer, more sustainable and safer development. ¹¹

China International Forum on Fair Competition Policy Opens in Beijing, Sponsored by SAMR

The 9th China International Forum on Fair Competition Policy was held in Beijing from November 14 to 15, with the theme of "Fair Competition, Unified Market and High Quality Development". The forum invited relevant government departments, competition law enforcement agencies of major countries (regions), local market regulation departments, experts and scholars, enterprises and lawyers, conducting in-depth discussions on "Fair Competition Policy in Building a Unified Market", "Anti-monopoly and High Quality Development" and "Anti-unfair Competition and Prosperity", etc.

¹²

SAMR Launches the "2022 China Fair Competition Policy Publicity Week"

From November 14 to 18, SAMR, together with relevant departments and units, launched the first China Fair Competition Policy Publicity Week. The theme of this event is "Uniform Market, Fair Competition for the Future". A total of 100 publicity and advocacy activities were carried out in a synchronized manner at the central and local levels, online and offline, to promote the concept and culture of safeguarding and promoting the construction of a unified large market with fair competition and promoting high-quality development in the whole society, to guide all kinds of market players to establish the awareness of fair competition and strengthen compliance management, and to foster a market-oriented, law-based and internationalized first-class business environment. ¹³

¹⁰ <http://scjgj.sh.gov.cn/919/20221114/2c984ad68467834501847411f2ca0d25.html>

¹¹ https://mp.weixin.qq.com/s/g-5I2GreENBlqraN6bprFQ?scene=25#wechat_redirect

¹² https://mp.weixin.qq.com/s/swKB_3pBos272ilGiDbEQ?scene=25#wechat_redirect

¹³ <https://www.samr.gov.cn/zt/jzz/>

Notice of the General Office of SAMR on Further Implementing the Anti-Monopoly Law

SAMR published the *Notice on Further Implementation of the Anti-monopoly Law of the People's Republic of China*, requiring administrations for market regulation at all levels to fully understand the importance of implementing the anti-monopoly law, to do a solid job in studying and publicizing the anti-monopoly law, to actively promote the effective implementation of the anti-monopoly law, and to effectively strengthen organizational leadership.¹⁴

¹⁴ https://www.samr.gov.cn/zt/jzz/zyhd/202209/t20220901_349720.html

Public Enforcement

Tianjin Drug Company Abuses Dominant Market Position to Charge Unfairly High Prices, Faces RMB 27.72 Million Fine

On November 17, 2022, Tianjin Administration for Market Regulation imposed a fine of RMB 27.72 million on Tianjin Jinyao Pharmaceutical Co., Ltd. for abusing its dominant position in China's carmustine injection market and selling carmustine injection at unfairly high prices, in violation of the provisions of the pre-amended AML on "selling commodities at unfairly high prices or buying commodities at unfairly low prices".¹⁵

NDRC Informs Typical Cases of Violating the Negative List of Market Access, Bike-Sharing Industry Being the Hardest Hit

On November 10, the General Office of the National Development and Reform Commission ("NDRC") released *Typical Cases of Violation of the Negative List of Market Access and Handling (No.4)*. Among the 23 cases notified, a total of 13 cases involved the bike-sharing industry.¹⁶

¹⁵ http://www.sse.com.cn/disclosure/listedinfo/announcement/c/new/2022-11-19/600488_20221119_Y2TM.pdf

¹⁶ https://www.ndrc.gov.cn/xxgk/zcfb/tz/202211/t20221110_1341065_ext.html

Merger Control

Due to Delay in Securing Chinese Antitrust Approval, DuPont Announced Termination of the Acquisition of Rogers, an Electronic Materials Maker

On November 2, 2022, DuPont said it terminated its \$5.2 billion acquisition of Rogers, because of protracted delays in securing regulatory approval, and will pay Rogers a termination fee of US\$162.5 million. In late September, DuPont had re-filed its acquisition of Rogers to Chinese antitrust authority and planned to complete the transaction as soon as possible, but as far as the current situation is concerned, it is not possible to achieve the expected plan.¹⁷

¹⁷ <https://www.reuters.com/markets/deals/duPonts-canceled-acquisition-fuels-fears-china-scuttling-mergers-2022-11-02/>

Courts Litigation

The Supreme Court Released Relevant Information and Typical Cases of the People's Courts' Efforts to Strengthen the Judicial System of Anti-Monopoly and Anti-Unfair Competition and Answered Reporters' Questions

On November 17, 2022, the SPC held a press conference to introduce the people's court's efforts to strengthen the judiciary of anti-monopoly and anti-unfair competition with typical cases, and answered reporters' questions. The typical cases released include 10 cases each of anti-monopoly and anti-unfair competition.¹⁸

SPC: Jurisdiction Rules for Anti-Monopoly Disputes Apply to Lawsuits for the Invalidity of Horizontal Monopoly Agreements

On November 15, the SPC heard the monopoly agreement case between Zhonglian Jiayu Technology (Weifang) Co., Ltd. and Zong Jun. Previously, in the ruling on jurisdictional objection of this case, the SPC pointed out that in the jurisdictional objection procedure, when the cause of action directly affects the court's jurisdiction over the case, a preliminary examination of the relevant facts that establish the cause of action should be conducted. Generally, it is only necessary to have prima facie evidence that can prove the formal connection between the facts and the relevant causes of action, in other words, it is sufficient to provide the prima facie evidence to an arguable degree.¹⁹

SPP Intervenes in Anti-Monopoly Litigation, SPC Will Hear Shell Case Again

On November 15, Shanxi Changlin Industrial Co., Ltd. filed the complaint to the Supreme People's Procuratorate ("SPP") against the ruling by Beijing High People's Court in its dispute with Shell (China) Co., Ltd. over abuse of dominant market position. The SPP considered that the case was in conformity with Article 207 (6) of the *Civil Procedure Law* and filed a protest with the Supreme People's Court. The Supreme People's Court will hear the case.²⁰

Honeywell Vertical Monopoly Agreement Case: the Supreme Court Rules Arbitration Clause cannot Preclude Court Jurisdiction

On November 12, in the case of Beijing Longshengxingye Technology Development Co., Ltd. and Honeywell Automation Control (China) Co., Ltd. et al. vertical monopoly agreement disputes, the SPC pointed out that the arbitration clause cannot be an ex-officio basis to exclude the jurisdiction of the people's courts in monopoly agreement disputes. The SPC held that the action for confirmation

¹⁸ https://mp.weixin.qq.com/s/lAgbpPmRgQOQsPeHUeN1VAQ?scene=25#wechat_redirect

¹⁹ <https://mp.weixin.qq.com/s/OvWi6JiGy8llQC10qh2zWA>

²⁰ <https://mp.weixin.qq.com/s/zruilzSzpQVgcS7IOywnEg>

of monopoly or simultaneous request for damages arising from the conclusion and performance of a contract is different from the action for contract or tort arising from a general contractual relationship, where the parties can choose a competent court. The anti-monopoly law has a clear public law nature. In the case that the identification and treatment of monopoly acts are completely beyond the rights and obligations between the contractual counterparties, the arbitration clause agreed by the parties in this case cannot be a natural and absolute basis for excluding the jurisdiction of the people's courts over monopoly agreement disputes.²¹

The Supreme Court's Groundbreaking Precedent: Water Supply Enterprises Conducted Implicit Exclusive Dealing Behavior

The SPC interpreted “implicit restricted trading” in the case of Weihai Hongfu Real Estate Co., Weihai Water Group. SPC held that, Weihai Water Group only indicated the contact information of its company and its subordinate companies in the list of business processing services, without informing and prompting the counterparty to choose other water supply and drainage construction enterprises with relevant qualifications, which is an implicit restriction that only designated units can handle the water supply and drainage design and construction of new projects. Therefore, it can be determined that Weihai Water Group has the subjective intention and objective content of restricting transactions.²²

²¹ <https://mp.weixin.qq.com/s/ik1NL3o9a-WLjzJkcOgNSw>

²² <https://mp.weixin.qq.com/s/18rI0mUvD5kXqdCMJK6Yhw>

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