

China Competition Policy & IP

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Meetings/Seminars/Projects

Anti-Monopoly Committee of the State Council Interprets the Anti-Monopoly Guidelines for the Platform Economy

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On February 7, 2021, an Anti-Monopoly Committee of the State Council officer interpreted the Anti-Monopoly Guidelines for the Platform Economy (Guidelines) in detail during an interview.

In response to a reporter's question, the officer pointed out that the basic system, regulatory principles, and analytical framework of China's Anti-Monopoly Law (AML) apply to operators in the platform economy. However, due to the complicated business model and competitive nature of the platform economy, it is necessary to further clarify the law enforcement principle of the anti-monopoly supervision in a platform economy based on its development situation, operating characteristics, and operating rules. Given the platform economy's characteristics, the officer explained the provisions in the Guidelines corresponding to monopoly agreements, abuse of market dominance, concentration of undertakings, and abuse of administrative power in the platform economy.

In addition, the interview highlighted specific provisions on issues such as "either-or" conduct and "price discrimination via big data. First, the Guidelines make it clear that "either-or" conduct may lead to abuse of dominance, and further refine the criteria for determining whether such conduct restricts or eliminates market competition. Second, it confirmed that discriminatory treatment via big data might constitute an abuse of market dominance. For example, some firms use big data and algorithms to capture users' information, including transaction records, payment capacity, consumption preferences, and habits. If companies use these data to conduct discriminatory practices, they may be liable.

Academic Seminar on Anti-Monopoly in Platform Economy Held in CUPL

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On February 5, 2021, the China University of Political Science and Law (CUPL) held an academic seminar on anti-monopoly issues related to the platform economy. Thirty-one experts were invited to express their views on anti-monopoly supervision in the platform economy, including Ms. Wang Xiaoye, a former member of the Anti-Monopoly Committee of the State Council Expert Advisory Group, as well as several members of the Expert Advisory Group and antitrust experts.

The AML has been in effect for twelve years; however, there are few anti-monopoly law enforcement cases against internet platform companies in China under the “tolerant and prudential” principle. Shi Jianzhong, Vice President of CUPL and member of the Expert Advisory Group, argued that some aspects of the platform economy need stronger antitrust enforcement. Moreover, Xu Shiyong, a professor from the East China University of Political Science and Law, said that the original supervision approach must be improved upon and even reformed according to the digital economy's characteristics. Meanwhile, Wang Xianlin, a professor from the Shanghai Jiao Tong University and a member of the Expert Advisory Group, noted that regulators should avoid going from one extreme (loose regulation) to another (excessive regulation). Yu Li, professor and former Vice President of Tianjin University of Finance and Economics, suggested that it needs to first clarify the definition of digital platforms when discussing whether this principle applies.

They also discussed the goal of antitrust regulation in a platform economy. After several experts' speeches, Shi Jianzhong concluded that no matter how policy changes, it is necessary to realize the interaction between competition and innovation, promote high-quality economic development, and ensure that consumers can share the benefits from competition and innovation. As mentioned by Wang Xiaoye, not only are people concerned about whether the AML is used appropriately, but they also worry about law enforcement becoming too strict to encourage innovation and competitiveness.

Further, they analyzed the difficulties and blind spots of antitrust in the platform economy. One blind spot is due to the different competition patterns. The core of competition matters in the digital economy focuses on platforms, data, and algorithms. For example, Wang Xianlin mentioned the particularity of platform companies' pricing strategies. Shi Jianzhong also highlighted the problem of data ownership. The other blind spot is reflected in the law of the jungle that allows companies to grow. As Xu Shiyong explained, internet platforms are both a company and a manager, so it is easier for them to restrict transactions, apply self-preference and algorithmic control, and even implement some means to eliminate competition, including some unreasonable mergers and acquisitions and internal integration. Those difficulties put forward higher requirements on the law enforcement of anti-monopoly agencies and related legal systems.

In addition, many experts expressed their concerns about the theory that "antitrust can solve everything." Wu Tao pointed out that, unlike Europe and the United States, China has many policy tools to solve the market supervision problem, and we need to choose the appropriate tools for problems with different root causes.

Regulatory News

The Anti-Monopoly Committee of the State Council Issues the Anti-Monopoly Guidelines for the Platform Economy

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On February 7, 2021, the Anti-Monopoly Committee of the State Council issued the Anti-Monopoly Guidelines for the Platform Economy (Guidelines). The Guidelines clarify the purpose and basic principles of anti-monopoly supervision, as well as detailed provisions on market definition, monopoly agreements, abuse of market dominance, concentration of undertakings, and abuse of administrative power in a platform economy. The analytical framework in the AML applies to all market entities, including operators in the platform economy. The Guidelines further improve the analysis approach based on the characteristics of the platform economy. Further details are as follows.

- **The Guidelines clarify the factors to be taken into account to determine the definition of relevant markets for the platforms.**

The basic method is the substitution analysis. More specifically, demand substitution analyses should consider platform functions, business models, application scenarios, user groups, multi-sided markets, offline transactions, and other factors. Additionally, supply substitution analyses should account for market entry, technical barriers, network effects, lock-in effects, transfer costs, and cross-border competition. The Guidelines highlight the cross-platform network effects when determining whether to define several interrelated markets or a single market for a platform.

- **In terms of monopoly agreements, the Guidelines point out that platforms may reach monopoly agreements, including horizontal and vertical monopoly agreements, through algorithms, technical means, etc.**

The Guidelines further add an explicit prohibition of a new type of monopoly agreement: a "hub-and-spoke" agreement. Factors – such as technical means, platform rules, data, and algorithms – should be considered when analyzing whether platforms reach and implement monopoly agreements to eliminate and restrict market competition.

- **Based on the characteristics of the platform economy, the Guidelines list the factors to be considered when determining the dominant market position.**

These factors include market share and competition conditions in relevant markets, operators' ability to control the market, operators' financial resources and technical conditions, and the degree of difficulty of market entry. Moreover, the Guidelines make it clear that "either-or" behaviors may lead to an abuse of market dominance.

In accordance with AML, the Guidelines clarify standards for declaration of concentration of undertakings for operators in a platform economy. Particularly, the Guidelines point out that undertakings using a VIE structure are subject to merger filing obligations.

SAMR Releases 2020 Work Review

[Read the Chinese version here](#)

On February 5, 2021, SAMR released its *2020 Work Review*. The review concluded the contributions of SAMR in multiple aspects, including promoting peoples' livelihoods with the principle of fairness, consolidating the foundation to better the competition system, and improving the quality and efficiency of the competition environment.

In 2020, SAMR improved consumer welfare and high-quality economic development through anti-monopoly work. Nationwide, 108 monopoly cases were settled, with a total fine of RMB 391 million; 481 concentration cases were filed; and 473 cases were closed. Moreover, the number of concentration cases filed and closed in 2020 has increased by 5% and 1.7%, respectively, as compared with 2019, and the average filing and reviewing times were shortened by 27% and 14.5%, respectively. Over 3,800 telephone consultations from enterprises and the public were received.

In addition, market regulators improved the anti-monopoly legal system, the top-level design of competition policy, the fair competition system, and the market competition evaluation system. "Amendment Draft of the Anti-Monopoly Law," and several guidelines such as the "Anti-monopoly Compliance Guidelines for Operators" and "Anti-monopoly Guidelines for the Platform Economy" were issued. SAMR also refined the competition review mechanism, cleaned up 1.07 million policies and practices, and completed an evaluation of competition in eight industries, including automotive, aviation, and platform economy.

Moreover, the authorities continue improving the quality and efficiency of the competitive environment.

- On the one hand, SAMR enhanced anti-monopoly law enforcement capabilities, advanced the modernization of the governance system, and promoted the continuous optimization of the fair competition market environment.
- On the other hand, in line with the internationalism and openness of anti-monopoly work, the authorities adhered to the "bringing in, going out" principle, promoted the institutional opening

of the competition field, actively participated in global competition governance, and discovered new strengths in international economic cooperation and competition.

SAMR Imposes Administrative Penalties on Vipshop for Unfair Competition Conduct

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On February 8, 2021, SAMR imposed a fine of RMB 3 million on Vipshop (China) Co., Ltd. (Vipshop) against unfair competition conduct.

Vipshop is a Chinese company that operates the e-commerce website VIP.com, which specializes in online discount sales. In January 2021, SAMR launched an investigation on Vipshop for suspected unfair competition conduct.

According to the decision, between August and December 2020, Vipshop used a monitoring system to obtain the information of brand merchants on the Vipshop platform and other platforms. It then reduced the customer's attention, traffic, and transaction chances towards the brand merchants by influencing users' selections, flow limits, and shielding, as well as pulling goods from shelves through technical means. SAMR determined that Vipshop restricted the brand merchants' sales channels, hampered the normal operation of the brand merchants and other merchants that provide the goods and services legally, and disrupted the market order of fair competition, ultimately penalizing Vipshop.

Vipshop has responded that it will take remedial measures and corrective actions immediately in accordance with the Anti-Unfair Competition Law.

China Architectural and Industrial Glass Association Responds to SAMR Anti-Monopoly Investigation

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Recently, SAMR conducted an anti-monopoly investigation of the China Architectural and Industrial Glass Association (CAIGA). On February 5, 2021, the CAIGA made a statement claiming that it realized that some practices in the work process failed to strictly comply with the requirements of the AML and would actively cooperate with SAMR in its investigation.

- CAIGA will immediately stop organizing its members to engage or participate in activities such as coordinating prices or reducing and restricting production in violation of the Anti-Monopoly Law.

- CAIGA will strengthen its study of the Anti-Monopoly Law, and modify or abolish any documents that might violate the Anti-Monopoly Law. CAIGA will also organize member companies to build self-discipline systems of antitrust, raise awareness of anti-monopoly, and carry out production and management independently.

Yunnan AMR Penalizes a Water Supply Company for Abuse of Dominance

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On February 18, 2021, SAMR issued a Yunnan Administration of Market Regulation (Yunnan AMR) decision against a local water supply company, Mengzi Sitong Taixing Water Supply Co., Ltd. (Sitong), for its abuse of market dominance.

Yunnan AMR launched the investigation in December 2018. Sitong has the exclusive right to operate in the water supply area designated by the government since 2008. Yunnan AMR defined the relevant market as the urban public water supply service market and determined that Sitong has complete dominance in the relevant market, considering it is the only supplier in the market. The investigation cited that Sitong forced construction companies to sign the water supply agreement on the condition that the water supply facilities be constructed and installed by Sitong.

Sitong's behavior constituted a violation of the AML's 17th clause, namely bundling or imposing other unreasonable trade conditions. It limited the trade counterparties' free options, damaged the counterparties' legitimate interests, and severely hampered the fair competition order of the water supply facility construction market. Yunnan AMR imposed a fine of 6% of Sitong's annual sales in 2018, a total of RMB 2,495,422.79.

SAMR Imposes Administrative Penalties on Simcere for Abusing Market Dominance

[Read the Chinese version here](#)

On January 22, 2021, SAMR imposed an administrative penalty on Simcere Pharmaceutical Group Co., Ltd. (Simcere) for abusing its dominant market position. Simcere was fined RMB 100.7 million for monopolistic behavior.

According to SAMR, the relevant product market in this case is the Batroxobin API sales market, and the relevant geographic market is China. Simcere abused its dominance in this market by refusing transactions with counterparties without justified reasons. Such behavior eliminated the competition in the Batroxobin injection market and harmed the interests of consumers.

According to the provisions of Article 47 and Article 49 of the AML, SAMR considered the nature, extent, and duration of Simcere's illegal activities, and the fact that Simcere has taken the initiative to make rectifications during the investigation and started to supply downstream companies with the products. As for the raw materials of Batroxobin, Simcere has not yet obtained its illegal income. Based on these factors, SAMR imposed a fine of 2% of Simcere's annual sales in 2019, which amounts to RMB 100.7 million.

Industry Updates

Shuabao Ordered to Compensate Douyin for Unfair Competition

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On January 18, 2021, Beijing Microlive Vision Technology Co., Ltd (Microlive) won its lawsuit against Beijing Chuangrui Culture & Media Co., Ltd. (Chuangrui). Microlive is the developer and operator of the Douyin app, and Chuangrui owns the Shuabao app. Both apps are short-video platforms in China. Microlive sued Chuangrui before Beijing Haidian District Court, alleging that Shuabao obtained the short videos and user comments from Douyin and provided them on Shuabao's app, which constituted unfair competition. Microlive requested RMB 40 million in economic losses.

The Beijing Haidian District Court decided that the short videos and users' comments on the Douyin app were obtained from Microlive's legitimate business activities, and should be protected by the Anti-Unfair Competition Law. Evidence showed that Shuabao used technical or manual methods to illegally obtain and copy short videos and users' comments on Douyin, meaning that Chuangrui competed for traffic and users without investing related costs, damaging Microlive's legitimate rights and interests. Such behavior violated the principle of good faith and acknowledged business ethics, and constituted unfair competition.

As the evidence was not sufficient to prove Microlive's actual losses or Chuangrui's illegal profit, the court comprehensively considered evidence including the duration of the behavior involved and the number of app downloads. The court also considered Chuangrui's refusal to submit relevant evidence. Based on these factors, the court ordered Chuangrui to pay the maximum amount of compensation to the plaintiff under the Anti-Unfair Competition Law.

With the rapid development of the short video market, video content and users have become core resources for short video platforms. This case provides useful guidance for their operators. Further, this verdict's maximum compensation amount should raise the alarm to those platforms that may be participating in anti-competitive conduct, and provide judicial guarantees for maintaining good competitive order in the short video market.

Meituan Failed in the "Either-Or" Case with Ele.me

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In February 2021, the lawsuit between Shanghai Lazars Information Technology Co., Ltd., the owner of Ele.me, and Beijing Sankuai Technology Co., Ltd., the owner of Meituan, concluded in the Intermediate People's Court of Jinhua City, Zhejiang Province. Meituan and Ele.me are both well-known food delivery platforms in China.

This case was raised after an investigation by the Jinhua Administration for Market Regulation (Jinhua AMR) into Meituan in 2016. During the investigation, Jinhua AMR found that merchants who operated exclusively on Meituan's platform enjoyed a 2% preferential service fee price. If the merchant violated the agreement, the service fee would increase to 6%. Meituan also forced the merchants to give up transactions with other competitive platforms.

Jinhua AMR decided that Meituan's conduct violated the Anti-Unfair Competition Law, and imposed a fine of RMB 80,000. Following the Jinhua AMR decision, Ele.me brought the case before the court and requested RMB 1 million in compensation for damages caused by Meituan's unfair competition conduct. The court decided that Meituan's conduct not only hampered the interests of its competitors and the merchants on its platform, but also hampered the customers' legitimate interests in violation of the Anti-Unfair Competition Law. The court ordered Meituan to compensate Ele.me with RMB 1 million for its economic losses.

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