

China Competition Policy & IP

MONTHLY UPDATE

FEBRUARY 2022

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Meetings/Seminars/Projects

State Council Information Office Holds Press Conference on Market Supervision

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On January 27, 2022, the State Council Information Office held a press conference on the status of market vitality and supervision in China, including an overview of the State Administration for Market Regulation's (SAMR's) priorities for the coming year. At the conference, Yuan Xilu – Director of SAMR's Price Supervision, Inspection, and Anti-Unfair Competition Bureau – specified that the market supervision department will focus on several key areas in 2022, including the platform economy, scientific and technological innovation, information security, livelihood protection, and fair competition order in the market.

In response to a reporter's question on how the market supervision authorities will further guide orderly competition and standardized development of various types of capital and market players in 2022, Mr. Yuan listed five work priorities:

1. **Improve the rules of fair competition regulation.** The authorities will accelerate the improvement of laws and regulations on anti-unfair competition and continuously improve the multi-level competition supervision rules system.
2. **Focus on critical areas of competition regulation.** The authorities will strengthen anti-monopoly and anti-unfair competition supervision and enforcement in key areas such as the platform economy, technology innovation, information security, and livelihood protection.
3. **Improve the ex ante and ex post regulation system.** The authorities will improve the market competition assessment system, promote the establishment of a risk alarm system, encourage enterprises to establish fair competition compliance systems, and improve preventive supervision measures.
4. **Consolidate the regulatory force of coordinated supervision.** The authorities will promote the construction of a comprehensive, multi-level regulatory system.
5. **Improve the ability to regulate fair competition.** The authorities will deepen basic theoretical research, strengthen personnel training and technical support, and build high-quality supervision teams.

Regulatory News

Four Authorities Issue New Algorithm Provisions to Prohibit Platforms' Monopolistic and Unfair Competition Behaviors

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On January 4, 2022, the Cyberspace Administration of China, the Ministry of Industry and Information Technology, the Ministry of Public Security, and SAMR jointly issued the "Internet Information Service Algorithmic Recommendation Management Provisions."

Algorithms, though they have become a driving force in promoting China's digital transformation in recent years, have also been subject to abuse by tech companies, which have used them to engage in monopolistic and unfair competition behaviors. The new provisions, which will go into effect on March 1, 2022, are designed to regulate the use of algorithmic recommendation technologies by tech giants on platforms ranging from social media to e-commerce.

According to the Cyberspace Administration of China, the provisions will standardize the recommendation activities of internet information service algorithms and help safeguard national security and public interests, protect the legitimate rights and interests of individuals and organizations, and promote the healthy development of internet services.

One notable update to the finalized provisions, which were first released as a draft in August 2021, is the addition of a new Article 15. The article stipulates that algorithm recommendation service providers shall not use algorithms to unreasonably restrict other providers, hinder or disrupt the normal operation of their lawfully provided internet information services, or engage in other monopolistic and unfair competitive behaviors.

Supreme People's Court Issues Guidelines on Utilizing Judicial Functions to Assist the Development of Micro, Small, and Medium-Sized Companies

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On January 13, 2022, the Supreme People's Court issued "Guiding Opinions on Giving Full Play to Judicial Functions to Assist the Development of Small, Medium, and Micro-Sized Companies" to the

High People's Courts in all provinces. The issuance lists six predominant guidelines – each with several specific measures – on providing judicial assistance to smaller market players across China, including:

1. Actively create a market environment for fair competition and honest operation.
2. Effectively strengthen the judicial protection of the property rights of micro, small, and medium-sized companies.
3. Help alleviate the difficulties and high cost of financing for micro, small, and medium-sized companies.
4. Efficiently handle cases of delinquent accounts for micro, small, and medium-sized companies in accordance with the law.
5. Effectively play the judicial rescue function for micro, small, and medium-sized companies.
6. Minimize the adverse impact of preservation and enforcement measures on micro, small, and medium-sized companies and other market players.

In regards to the first guideline on creating a market environment for fair competition and honest operation, the guidelines stipulate that the courts shall hear anti-monopoly cases fairly and efficiently in accordance with the law, and strictly punish illegal behaviors such as “either-or,” price dumping, compulsory bundling and tying, or shielding and blocking. Likewise, the courts should legally determine operators’ exclusion or restriction of competition through abuse of advantages; work to prevent the disorderly expansion of capital and protect the survival and development of micro, small, and medium-sized companies; and improve the connection mechanism between the judiciary and law enforcement.

Anti-Monopoly Enforcement Department I Director Wu Zhenguo Highlights 2022 Anti-Monopoly Work

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In November 2021, the Sixth Plenary Session of the 19th Central Committee of the Communist Party of China (CPC) adopted the “Resolution of the CPC Central Committee on the Major Achievements and Historical Experience of the Party’s Century-Long Struggle.” The resolution highlights the CPC’s accomplishments and developments over the past 100 years and – based on these experiences – provides guidance for future progress, including in market regulation.

The resolution points out that it will be necessary to continue to strengthen market supervision and anti-monopoly regulation, prevent the disorderly expansion of capital, maintain the market order, stimulate the vitality of various market players – especially small and medium-sized companies – and protect the rights and interests of workers and consumers.

In a January 2022 interview, Wu Zhenguo, Director of Anti-Monopoly Law Enforcement Department I of SAMR's Anti-Monopoly Bureau, discussed how the Sixth Plenary Session and the resolution will impact anti-monopoly work in the years to come. Mr. Wu said that development in this area will adhere to the idea of "people first" and that, in 2022, the Anti-Monopoly Department I will focus on the following five key aspects:

1. Resolutely implementing the major decisions and plans of the Central Committee and State Council to strengthen anti-monopoly regulations and enforcement.
2. Bolstering the construction of the rule of law and accelerating improvement of the fair competition legal system.
3. Strengthening the sense of responsibility to further improve anti-monopoly supervision and enforcement.
4. Reinforcing the system construction to enhance the authority of anti-monopoly supervision and effectiveness of enforcement.
5. Promoting the opening of the competition system.

SAMR Conditionally Approves GlobalWafers' Acquisition of Siltronic

[Read the Chinese version here](#)

On January 21, 2022, SAMR announced its approval of GlobalWafers' acquisition of Siltronic's equity with restrictive conditions.

The acquirer, GlobalWafers, is a Taiwanese tech manufacturing company mainly engaged in wafer fabrication, solar cell, and module-related businesses. Siltronic – based in Germany – is primarily involved in wafer fabrication-related business. On December 9, 2020, the two parties signed an acquisition agreement. Upon completion of the concentration, GlobalWafers will obtain sole control of Siltronic.

In this case, the relevant product markets are defined as silicon wafers that are up to 6 inches in size, 8-inch Czochralski wafers, 8-inch float-zone wafers, and 12-inch wafers. The relevant geographic market is defined as the global market, while focusing on the situation in the Chinese market.

After careful review and analysis of the acquisition, SAMR found that GlobalWafers and Siltronic have a horizontal overlap in the global and domestic 8-inch float-zone wafer markets. In 2020, the two companies had a combined market share of 55–60% in the global 8-inch float-zone wafer market and 30–35% in China. In the global and domestic 8-inch float-zone wafer market, the Herfindahl–Hirschman Index (HHI) measure for GlobalWafers and Siltronic is currently 3,296 and 3,127, respectively, and will become 4,019 and 3,323, respectively, after the concentration, with a significant increase in market concentration and a reduction of the number of major competitors.

Since this concentration may have the effect of eliminating or restricting competition in the relevant market, SAMR decided to approve the transaction with the following remedies:

1. GlobalWafers must divest its float-zone wafer business – namely, the float-zone wafer business of Topsil GlobalWafers A/S of Denmark – within six months.
2. The post-concentration entity must continue to supply all types of wafer products to customers in China under fair, reasonable, and non-discriminatory principles.
3. After the expiration of contracts, if customers in China want to renew a contract, the post-concentration entity shall not refuse to do so without valid reasons, and the renewal terms shall not be lower than the original contracts.
4. The post-concentration entity must conduct ongoing training for relevant managers and employees and take necessary measures to ensure the implementation of the commitment program.

SAMR Conditionally Approves AMD's Acquisition of a Stake in Xilinx

[Read the Chinese version here](#)

On January 27, 2022, SAMR announced its approval of the acquisition of Xilinx Technology Beijing Limited (Xilinx) by Advanced Micro Devices, Inc. (AMD) with additional restrictive conditions. SAMR first received an antitrust filing for the concentration of undertakings in the case on January 19, 2021.

The acquirer AMD, a multinational semiconductor company based in the US, is engaged in developing, producing, and selling central processing units (CPUs) and graphics processing units (GPUs). The acquiree Xilinx is mainly involved in developing, producing, and selling field-programmable gate arrays (FPGAs). On October 26, 2020, the two parties signed an agreement under which AMD intended to acquire Xilinx in an all-stock transaction valued at \$35 billion. After the concentration, the former AMD and Xilinx shareholders will hold 74% and 26%, respectively, of equity interest in the post-concentration entity.

Because of the adjacent relationship between AMD's CPUs and GPUs and Xilinx's FPGAs, the relevant product markets in the case are separately defined as CPUs, GPUs, and FPGAs. The relevant geographic market is defined as the global market, while focusing on the situation in the Chinese market.

SAMR analyzed the impact of this concentration on competition in the market. In the FPGA market in 2020, Xilinx had strong market power, with global and domestic market shares accounting for 50–55% and 50–55%, respectively, both ranking first. Additionally, the post-concentration entity will be the only vendor in the world that can offer CPU, GPU, and FPGA products simultaneously. CPU, GPU, and FPGA together constitute the core components that affect the performance of data center

servers, and mismatched performance or insufficient interoperability among them can lead to performance bottlenecks. Therefore, the concentration may have the effect of excluding or restricting competition in the Chinese and global CPU, GPU, and FPGA markets through behaviors such as bundled sales and refusals to sell.

Based on these factors, SAMR decided to approve the concentration with additional restrictive conditions, requiring the post-concentration entity to fulfill five obligations. These include no bundled sales for the relevant products involved, supplying products according to fair, reasonable, and non-discriminatory principles, and maintaining interoperability between relevant products.

13 Administrative Penalty Decisions Imposed in Internet Sector Due to Failures to File

[Read the Chinese version here](#)

On January 5, 2022, SAMR's Anti-Monopoly Bureau issued 13 administrative penalty decisions for illegal concentration of undertakings in the internet sector. The penalized operators include Tencent Holdings Ltd. (Tencent), Bilibili Inc. (Bilibili), Alibaba (China) Network Technology Co., Ltd. (Alibaba), and Jiangsu Jingdong Bangneng Investment Management Co., Ltd. (Jingdong Bangneng).

The 13 cases all violated Article 21 of the Anti-Monopoly Law and constituted illegal implementation of concentration of undertakings since they were implemented without filing with the authorities. However, SAMR's final assessment concluded that none of the concentrations of undertakings in question had the effect of excluding or restricting competition. According to the relevant provisions, SAMR decided to impose administrative penalties of RMB 500,000 in each case.

Tencent was penalized in nine cases, comprising seven cases of acquisition of equity interests and two cases of establishment of joint ventures, and fined a total of RMB 4.5 million. Alibaba was fined in two cases, while Jingdong Bangneng and Bilibili were both fined in a single case.

These penalties highlight regulators' continued concerns over disorderly expansion of capital in the platform economy, the restriction of competition through platforms' concentrations, and suspected monopolies. The penalties are also a continuation of strengthened anti-monopoly enforcement in the internet sector.

Water Company Penalized for Abuse of Market Dominance

[Read the Chinese version here](#)

In January 2021, the Anhui Administration of Market Regulation (Anhui AMR) filed an investigation into the alleged abuse of market dominance by Fengyang County Yimin Water Supply Co., Ltd. (Yimin). It issued an administrative penalty decision in January 2022. The Anhui AMR held that Yimin abused its market dominance in providing public water supply services and imposed unreasonable trading conditions, which excluded and restricted market competition and harmed the legitimate rights and interests of the counterparties to the transactions.

In this case, the relevant product market is the urban public water supply service market. The relevant geographic market is defined as several areas in Fengyang County, including Fucheng Town, Linhuai Town, Mentai Economic Development Zone, and Banqiao Town. The Anhui AMR found that Yimin holds 100% market share in the relevant market and, therefore, is dominant. In addition, considering the fact that building an urban public water supply network and its ancillary facilities requires large investment and long cost recovery periods, it is difficult for other operators to enter the relevant geographic market in this case.

Anhui AMR determined that Yimin committed the following abuses of dominant market position:

1. Ordering the relevant units to procure secondary water supply equipment only from the party concerned or its designated suppliers.
2. Ordering the relevant units to purchase water meters only from the party concerned.
3. Imposing unreasonable trading conditions to collect deposits from temporary water users.
4. Implementing unreasonable trading conditions to collect deposits from real estate development enterprises for hanging meters.

The Anhui AMR found that such acts violated the Anti-Monopoly Law and constituted an abuse of market dominance. Along with ordering Yimin to stop the illegal acts and refund water use and meter deposits totaling RMB 781,700, the regulatory authority confiscated the water company's illegal income and imposed a fine of 4% of the company's 2020 sales, which amounted to RMB 1,769,119.

Industry Updates

China's First Unfair Competition Case Involving Search Engine Interference by Algorithms Sentenced in First Instance Ruling

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On January 12, 2022, the Beijing Haidian District Court handed down the first instance judgment of Beijing Baidu Netcom Science and Technology Co., Ltd. (Baidu) vs. Shenzhen Woai Network Technology Co., Ltd. (5iads). The case is China's first unfair competition dispute involving human-powered platforms' interference of search engine algorithms.

The plaintiff, Baidu, is the operator of the Baidu search engine. The plaintiff claimed that the defendant, as the operator of the 5iads website, artificially interfered in the normal ranking of search engines by creating fake click data, which harms the interests of consumers and constitutes unfair competition. Therefore, Baidu requested that the defendant be ordered to eliminate the impact and compensate the company for its economic losses and reasonable expenses, totaling RMB 5 million.

After hearing the case, the court held that the defendant's behavior increased the various costs of Baidu to maintain normal search services, damaged the normal service environment provided by the plaintiff, and disturbed the order of market competition. According to Article 2 of the Anti-Unfair Competition Law, such behavior constituted unfair competition. Considering the defendant's apparent subjective intent, the significant impact of its unfair competition, and its failure to adduce evidence truthfully, the court ruled that 5iads must publish an announcement to eliminate the impact and compensate Baidu economic losses of RMB 2 million and reasonable expenses of RMB 50,000.

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