

# China Competition Policy & IP

MONTHLY UPDATE

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# Meetings/Seminars/Projects

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## Beijing AMR Holds Antitrust Compliance Training for Platform Companies

[Read the Chinese version here](#)

On May 17–18, 2022, the Beijing Administration for Market Regulation (Beijing AMR) held an online training on antitrust compliance for platform enterprises. Over 400 business leaders from more than 150 Beijing-based platform enterprises – such as Tencent, Alibaba, Douyin, Baidu, Jingdong, Didi, and Meituan – participated in the training.

At the training, experts, scholars, and lawyers explained various antitrust theories and practical cases, and provided a comparative overview of platform antitrust practices in the EU, US, and other international jurisdictions. They also interpreted how the Beijing Anti-Monopoly Compliance Guidelines for the Platform Economy should be applied in four different areas: monopoly agreements, abuse of market dominance, algorithmic abuse, and concentrations of undertakings.

Experts further elaborated on the constitutive elements and analytical framework of monopolistic acts and provided a detailed analysis of key issues in the anti-monopoly field – such as algorithmic collusion, big data price discrimination, user data sharing, and the blocking of competitors' website links – in the context of China's digital economy.

Key takeaways from the training included:

- The application of algorithmic technology in the platform economy entails problems, such as low transparency and poor interpretability. Platform companies should increase the transparency of their own behavior, focus on safeguarding consumers' right to choose, and strengthen third-party evaluation and communication mechanisms.
- During the data collection and transmission process, platform companies should avoid transmitting information among operators within the platform or to operators on other platforms. Additionally, platform companies should make every effort to avoid imposing restrictions on the business activities of platform operators when they use other platforms.
- Multi-sidedness is a crucial attribute affecting the definition of relevant markets in the platform economy. In defining the relevant market for market dominance abuse, an analysis of demand substitution and supply substitution for multilateral goods is required.
- Any concentrations of platform undertakings that meet the criteria for declaration should be filed before the antitrust enforcement agency, including mergers with a variable interest entity (VIE) structure.

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# CPPCC National Committee Discusses Revisions to Arbitration Law

[Read the Chinese version here](#)

On May 30, 2022, the 63<sup>rd</sup> biweekly seminar of the Chinese People's Political Consultative Conference (CPPCC) was convened by the 13<sup>th</sup> CPPCC National Committee in Beijing to discuss revising the Arbitration Law. Wang Yang, a member of the Standing Committee of the Political Bureau of the Communist Party of China Central Committee and chairman of the CPPCC National Committee, presided over the seminar.

Ten CPPCC members, as well as experts and scholars, delivered consultative speeches at the seminar, while nearly 80 members contributed their views via an online platform. They voiced that, while the current Arbitration Law has fulfilled an important role in resolving civil and commercial disputes and serving economic and social development, it nonetheless needs urgent improvements and revisions to meet current arbitration needs. As is, the law suffers from a narrow scope of acceptance of cases, unclear positioning of the nature of arbitration institutions, meager provisions relating to arbitrators, inadequate judicial support and supervision mechanisms, and insufficient convergence with international arbitration rules.

Therefore, members suggested that the Arbitration Law be amended to moderately expand the scope of arbitration, allowing – in principle – parties to arbitrate all disputes that they are entitled to initiate and that do not affect the public interest. Drawing on common international practice, the jurisdiction of arbitration should be further expanded to include disputes in areas such as intellectual property, international investment, sports, and antitrust.

# Regulatory News

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## SAMR Issues Legislative Work Plan for 2022

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On April 26, 2022, the State Administration for Market Regulation (SAMR) published its Legislative Work Plan for 2022, which is centered on accelerating the establishment of a uniform national market system and rules as well as promoting high-quality development.

The work plan is divided into three parts: system building, future priorities, and implementation.

In the first part, SAMR announced 69 legislative projects. Among them, 14 laws and administrative regulations are to be drafted and submitted for review, including revisions to the Anti-Unfair Competition Law, Provisions of the State Council on the Standards for Declaration of Concentration of Business Operators, and Provisions on Administrative Penalties for Price Violations. In addition, SAMR also intends to formulate and amend 55 departmental regulations this year, with a focus on improving the antitrust legal rules. In particular, to improve the system of anti-monopoly laws and safeguard fair competition with impartial supervision, the authorities will amend the Interim Provisions on the Prohibition of Monopoly Agreements, the Interim Provisions on the Prohibition of Abuse of Market Dominance, and other relevant laws and regulations.

In the second part, SAMR stated its future priorities for 2022. First, the regulator will improve the legislative working mechanism and strive to enhance the quality and efficiency of legislation. Second, it will coordinate the codification of legislation, amendments, repeals, and interpretations to speed up the construction of a systematic, scientific, and effective legal regulatory system for market supervision. Furthermore, SAMR will strengthen the promotion and interpretation of legislation and increase efforts to popularize the law.

In the third part, SAMR focuses on the implementation of the work plan. Local market regulators are required to base their enforcement on grassroots-level practices, support and actively participate in SAMR's legislative work, and promptly report relevant information to the national regulator.

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## Antitrust and IPR Protection Included in 2022 National Cost Reduction Work

[Read the Chinese version here](#)

On May 10, 2022, several national authorities – including the National Development and Reform Commission, Ministry of Industry and Information Technology, Ministry of Finance, and the People's

Bank of China – announced 26 tasks in eight areas to reduce the cost of enterprises in the real economy, including in the creation of a fair and competitive market environment. Antitrust and intellectual property rights (IPR) protection-related tasks aimed towards reducing institutional transaction costs include:

- Further promoting the implementation of fair competition policies, fully implementing the fair competition review system, and preventing any policy initiatives containing local protectionism, designated transactions, and market segmentation.
- Strengthening antitrust and anti-unfair competition enforcement; investigating monopoly agreements, abuse of dominant market positions, and unfair competition in accordance with the law; and maintaining a fair and orderly market environment.
- Enhancing the protection and application of intellectual property rights.

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## SAMR Launches Investigation into CNKI for Suspected Monopoly

[Read the Chinese version here](#)

On May 13, 2022, SAMR announced that – based on pre-inspections – it had launched an antitrust investigation into China National Knowledge Infrastructure (CNKI), one of China’s biggest online academic databases.

Several CNKI users, including universities and research institutions, have recently reported a spike in CNKI subscription renewal fees to nearly RMB 10 million a year. In April 2022, the Chinese Academy of Sciences suspended its CNKI subscription due to the unreasonable fees. Meanwhile, CNKI also published numerous papers without paying the contributing authors or receiving authorization from authors, sparking dissatisfaction among authors. Such practices are suspected to constitute an abuse of a dominant market position. The formal investigation into CNKI’s alleged industry monopoly and abuse of dominant market position is underway.

In response to the investigation, CNKI announced that it will take this investigation as an opportunity to conduct an in-depth and comprehensive self-examination and rectification, operate in compliance with laws and regulations, and fulfill its social responsibility as a knowledge infrastructure.

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## Draft Amendment to the Anti-Monopoly Law to Be Reviewed for the Second Time in June

[Read the Chinese version here](#)

On May 6, 2022, the Standing Committee of the National People's Congress (NPC) released its Legislative Work Plan for 2022, which disclosed that the NPC will review the draft amendment to the Anti-Monopoly Law (AML) for the second time in June 2022. In addition, the draft amendment to the Anti-Unfair Competition Law is listed as a preparatory item for review.

With the central government's repeated emphasis on anti-monopoly measures, improving the legal system and the underlying regime has become necessary to build an effective market regulatory system for market supervision. In addition to the Standing Committee of the NPC, SAMR also stressed in its recent meeting the need to speed up the revision of the AML and the construction of the relevant supporting system. SAMR stated that the authorities will investigate and deal with all kinds of illegal acts – such as monopolies and unfair competition – in accordance with the law to create more space for the development of various types of capital in a fair market.

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## Ningxia Changran Fined for Abuse of Market Dominance

[Read the Chinese version here](#)

On May 26, 2022, SAMR published the administrative penalty decision against Ningxia Changran Natural Gas Co., Ltd. (Ningxia Changran) for its abuse of market dominance.

The relevant market in this case is the market for piped gas supply services in the Hongsibu District of Wuzhong. According to a franchise agreement, Ningxia Changran is the only piped gas service provider in Hongsibu District, with a 100% market share. Following an investigation, Ningxia AMR found that Ningxia Changran improperly bundled the sales of alarms and bellows with gas service and forced residents to purchase the products, which constituted an abuse of market dominance. Therefore, on April 26, 2022, Ningxia AMR decided to confiscate the gas company's illegal proceeds of RMB 752,749.50 and fined 2% of its 2020 annual sales, which amounts to RMB 357,822.05.

Subsequently, on May 7, 2022, Ningxia AMR imposed another administrative fine of RMB 50,000 on the head of Ningxia Changran's administrative department for deliberately concealing facts and providing false prices of alarms and bellows, which constituted a refusal and obstruction of the anti-monopoly investigation.

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# Report on IPR Protection and Business Environment Developments in 2021 Released

[Read the Chinese version here](#)

On April 26, 2022, the State Council Information Office (SCIO) released the “Report on the Latest Development of IPR Protection and Business Environment in China (2021),” which was drafted by the Office of the National Leading Group on Fight against IPR Infringement and Counterfeiting. The report summarizes China’s efforts to protect IPR and optimize the business environment. It was introduced at a press conference by Gan Lin, Director of the Office of the National Leading Group on Fight against IPR Infringement and Counterfeiting and Deputy Director of SAMR.

China’s IPR undertakings experienced rapid development, and the country’s ability to create, utilize, and protect IPR was steadily improved. In 2021, China’s total research and development (R&D) expenditures came to RMB 2,786.4 billion, increasing 14.2% year-on-year. China also granted 696,000 invention patents, 3.12 million utility model patents, and 786,000 design patents in 2021. Moreover, the authorities placed IPR protection in a more prominent position. Courts nationwide concluded 541,000 first instance IPR cases, increasing 16.1% year-on-year, and imposed punitive compensation on infringers in 895 cases.

In terms of the business environment, the authorities intensified the reform of the business system and constantly improved legal protection, pushing the optimization of the business environment to a new level. In 2021, by strengthening anti-monopoly supervision and law enforcement in key areas such as the platform economy, China investigated and dealt with 176 monopoly cases, concluded 727 cases about concentrations of undertakings, and gradually solved the problem of “either-or” in the platform economy. Additionally, SAMR investigated and dealt with 8,563 cases of unfair competition, 118,000 cases of price violations, and 42,700 cases of false and illegal advertising in 2021, fostering the awareness of fair competition and the rule of law.

Moving forward, the authorities will fully implement the new development philosophy, speed up the construction of a new development pattern, create a favorable climate for the innovation and entrepreneurship of Chinese and foreign rights holders, and build a safe environment for consumers.



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# Guidance on Investigating and Punishing Illegal Acts of Price Gouging Released for Public Comments

[Read the Chinese version here](#)

On May 11, 2022, SAMR released the “Guidance on Investigating and Punishing Illegal Acts of Price Gouging (Draft for Comments),” which clarifies the determination of illegal acts of price gouging as stipulated in the Provisions on Administrative Penalties for Pricing Illegal Acts.

According to the draft guidance, SAMR proposed to identify 14 acts as illegal acts of price gouging. Among them, several acts fall within the scope of Article 6(1) of the provisions. These include fabricating and disseminating information on production and purchase costs, shortage of supply or surge in market demand, other business operators raising or preparing to raise prices, price increases, inducing pricing terminology – such as “serious shortage” – and other information that may push up commodity price expectations.

Three acts are illegal according to Article 6(2) of the provisions, including excessive hoards by the operators in the production or sales processes without justifiable reasons after being warned by the market supervision department.

Applying Article 6(3) of the Provisions, the following four acts are found to be illegal: imposing tying to increase prices, unreasonable and substantial increases in transport fees or other fees, significant price increases with costs unchanged or increased, and promoting excessive prices by other means.

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# SAMR Launches Innovation Pilot Work on Fair Competition Review System

[Read the Chinese version here](#)

On May 19, 2022, SAMR organized four pilot projects on a fair competition review system in nine provinces or cities, including Tianjin, Jilin, and Shanghai. The four pilot projects include fair competition review in information technology construction, report processing, a review of major policies and measures, and a fair competition index.

The four pilot projects cover the whole chain of fair competition review implementation, with the following four work priorities:

1. Enhance the effectiveness of the review in the information technology construction pilots in Jiangsu and Chongqing. The application of automated information collection and big data analysis will improve the level of review intelligence, standardization, and specialization.

2. Strengthen the rigid constraints of the system in the major policy measures review pilots in Tianjin, Jilin, Shanghai, Zhejiang, and Shandong. The pilot provinces will strictly guard against the introduction of policies and measures that exclude and restrict competition and improve the coordination between fair competition policy and industry policies.
3. Promptly respond to the concerns of market players in the reporting pilots in Anhui and Guangdong. The pilot provinces will build a fair competition review reporting and handling mechanism with a smooth communication channel, complete rules, efficient operation, and strong supervision to enhance the system's authority.
4. Strengthen the relevance and science of fair competition policy implementation in the fair competition index pilots in Zhejiang and Guangdong. The pilots will compile a fair competition index to explore and improve the macro assessment and implementation of fair competition policies.

# Industry Updates

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## Wilo Trademark Infringement and Unfair Competition Case Sentenced

[Read the Chinese version here](#)

On April 6, 2022, the Beijing Intellectual Property Court announced the second instance verdict of the Wilo trademark infringement and unfair competition case. The court increased the economic damages awarded to Wilo China from RMB 500,000 in the first instance judgment to RMB 5 million.

The plaintiff in the case is Wilo (China) Pump System Co., Ltd. (Wilo China), a water pump and system manufacturer that has a license from Wilo Germany to use the “Wilo” trademark. The defendants are Weile Pump Industry (Jiangsu) Co., Ltd. (Weile Jiangsu) and Beijing Sunshine Keyu New Energy Technology Company (Sunshine Keyu). Weile Jiangsu, established in 2014, also manufactures and sells water pumps, while Sunshine Keyu sells solar water heaters and air source heat pumps. As a typical case of trademark rights infringement and an unfair competition dispute, the court’s judgment in the case establishes a reference for whether Weile Jiangsu and Sunshine Keyu as co-defendants constitute the necessary joint action.

In 2017, Wilo China became aware that Weile Jiangsu manufactured products using the “Wilo” trademark and promoted and sold them through its website and various e-commerce platforms; Sunshine Keyu also assisted in selling the relevant products. The defendants’ actions infringed Wilo China’s license to use the trademark “Wilo” and constituted unfair competition. Wilo China, therefore, brought the lawsuit against Weile Jiangsu and Sunshine Keyu as co-defendants, demanding that they stop the trademark infringement and unfair competition, publish a statement to eliminate the impact, and compensate the company for financial losses and reasonable expenses of RMB 5.2 million.

The court of first instance ruled that the defendants should cease the infringement and unfair competition, but held that Weile Jiangsu’s promotion and sales on the e-commerce platform fell outside the scope of the case. Therefore, the court only awarded Wilo China RMB 500,000 in economic damages and RMB 100,000 in reasonable costs and expenses.

Wilo China and Weile Jiangsu both appealed to the Beijing Intellectual Property Court against the first instance judgment. After careful consideration, the court considered Weile Jiangsu and Sunshine Keyu co-defendants, and that both should bear the corresponding civil infringement liability. It held that the economic damages determined by the first instance court were far less than the illegal profits of Wilo Jiangsu for its trademark infringement and unfair competition. Considering factors such as brand recognition, the defendants’ subjective malice, the scope of sales of the infringing products, production, sales volume, and profits, the court ruled that Weile Jiangsu must

pay Wilo China the RMB 5 million claimed as compensation for economic damages. Sunshine Keyu, as a seller of the products in question, bears joint liability within the range of RMB 150,000.

## Learn More

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