

2020 Antitrust Annual Report

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Executive Summary

In 2020, China's antitrust regulation and enforcement reached new levels, increasing both in terms of scope and robustness. Antitrust agencies stood up to the challenge of complex international political and economic environments and the impact of COVID-19, organized the first major revision of the Anti-Monopoly Law (AML), promulgated and improved several antitrust regulations and guidelines, and strengthened law enforcement in key industries and fields.

The number of antitrust litigation cases in the judicial field has continued to increase, and judicial decisions have also played an important role in developing China's antitrust landscape. The competition work in China has achieved fruitful results in various aspects of legislation, law enforcement, and justice.

Achievements in the Legislative Field of China's Anti-Monopoly Work in 2020

On January 2, 2020, the State Administration for Market Regulation (SAMR) issued a revised draft of the AML and solicited opinions from the public.¹ Considering the developments in the Chinese market environment in recent years, the new draft addressed deficiencies in the current AML and provided a legal basis for meeting the emerging needs of antitrust regulations in China's economic development in the new era.

The revised draft optimizes antitrust law enforcement procedures and increases the intensity of administrative penalties, thereby enhancing the operability and deterrence of the AML. Regarding the regulatory system, the revised draft systematically adjusts and improves the substantive norms and institutional frameworks for regulating monopoly agreements and the

¹ SAMR, "Announcement of SAMR on Soliciting Public Opinions on the Revised Draft of the AML (Draft for Public Comments)," January 2, 2020, http://www.samr.gov.cn/hd/zjdc/202001/t20200102_310120.html.

declaration system for undertaking concentration. It also introduces a fair competition review system to strengthen control over the abuse of administrative power at eliminating or restricting competition.

In addition, the revised draft adds antitrust clauses in the internet field for the first time. Targeting the characteristics of operators in the internet sector, the draft proposed that factors such as network effects and economies of scale should be considered when identifying market dominance in order to provide more targeted and operational norms for antitrust work in the internet field.

In 2020, SAMR also released four antitrust guidelines, including the Anti-Monopoly Guidelines for the Automobile Industry, the Anti-Monopoly Guidelines for Intellectual Property Rights, the Guidelines for Application of the Leniency Program in Horizontal Monopoly Agreement Cases, and the Guidelines on Undertakings' Commitments in Antitrust Cases. All four guidelines were approved by the Anti-Monopoly Commission of the State Council.²

Anti-Monopoly Guidelines for the Automobile Industry

The guidelines for the automobile industry mainly focus on vertical monopoly agreements within the automobile industry. The guidelines establish a basic analysis framework of “prohibition and exemption” for vertical monopoly agreements, first determining whether a behavior constitutes a vertical monopoly agreement under Article 14 of the AML, and then evaluating whether it is applicable to the presumptive exemption under Article 15 of the AML; if not, it then assesses whether it applies to a case exemption. The guidelines stipulate that vertical monopoly agreements with “fixed resale price and limited minimum resale price” are not applicable to presumptive exemptions.

The types of case exemptions include resale price restrictions on dealers who only assume the role of intermediaries, government procurement, e-commerce sales from automobile suppliers, and short-term resale price restrictions on new energy vehicles. As for vertical monopoly agreements with geographical restrictions and customer restrictions, some cases apply to presumptive exemptions. Automotive industry operators who do not have significant market

² SAMR, “Anti-Monopoly Guidelines for Intellectual Property Rights,” September 18, 2020, http://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918_321857.html;

SAMR, “Anti-Monopoly Guidelines for the Automobile Industry,” September 18, 2020, http://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918_321860.html;

SAMR, “Guidelines for Application of the Leniency Program of Horizontal Monopoly Agreement Cases,” September 18, 2020, http://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918_321856.html;

SAMR, “Guidelines on Undertakings' Commitments in Antitrust Cases,” September 18, 2020, http://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918_321855.html.

power (with market shares less than 30% in the relevant market) are exempt from the guidelines if the geographical and customer restrictions are economically efficient with justified reasons. However, cases cannot apply to presumptive exemptions if the geographical and customer restrictions involve restrictions on dealers' passive sales, cross-supply between dealers, and/or supplies of spare parts for auto repair from dealers or maintenance service providers to end-users.³

It is clear that vertical monopoly agreements in the automotive industry will be one of the focuses of future anti-monopoly enforcement. For those that are potentially applicable to the exemption clauses, it is necessary, when conducting economic analyses, to examine the market power of the operators and the economic efficiency generated by their actions. It's also necessary to evaluate whether the actions are exempt from imposing significant restrictions on market competition, and enable consumers to enjoy the benefits arising therefrom.

Additionally, the automobile industry guidelines also mention the abuse of market dominance. The guidelines propose that, for the definition of the relevant automobile after-sales market, the lock-in effect and compatibility issues must be taken into consideration. Therefore, since the automobile brands themselves are becoming an important factor, certain brands can be deemed to have a dominant position in the aftermarket.⁴ This provides guidance for competitive analysis in the aftermarket.

Anti-Monopoly Guidelines for Intellectual Property Rights

Meanwhile, the intellectual property (IP) guidelines issued by SAMR elaborate the principles and general ideas of the analysis of anti-monopoly regulations in the field of intellectual property. First, the guidelines determine the possible types of anticompetitive actions and go on to define the relevant markets and analyze the impact of the actions on market competition. Additionally, it analyzes the positive impact of the actions on innovation and efficiency. The guidelines analyze agreements involving IP rights that might constitute monopoly agreements, including factors such as joint R&D, cross-licensing, exclusive grant-back, non-questioning clauses, standard-setting, and other restrictions. To be in line with international standards, the "safe harbor rule" is established with respect to monopoly agreements. In addition, the IP guidelines clarify that "owners of IP rights do not necessarily have a dominant market position" in the section of the abuse of market dominance. The guidelines list five types of actions –

³ SAMR, "Anti-Monopoly Guidelines for the Automobile Industry," September 18, 2020, http://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918_321860.html.

⁴ SAMR, "Anti-Monopoly Guidelines for Automobile Industry," September 18, 2020, http://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918_321860.html.

including unfairly excessive prices, refusal to license, bundling and tying sales, additional unreasonable trade conditions, and differential treatment – and offer analysis and considerations for evaluating whether each action constitutes abuse.⁵

The IP guidelines put forward the need to combine various factors when evaluating whether an operator has set up an unfairly excessive price. The factors include the contribution of IP to the value of related products, and the historical licensing of IP or comparable license fee standards. This means that, in economic analysis, a variety of methods – such as the top-down approach and the comparable license approach – can be utilized to assess whether the license fees of operators are unfairly excessive.

Antitrust Guidelines for the Platform Economy

In November 2020, SAMR issued the Antitrust Guidelines for the Platform Economy for public comment.⁶ The guidelines were officially released and implemented in February 2021.⁷ This indicates that the previous “inclusive and prudential” principle for the antitrust supervision of the platforms has been changed in China, and that the platform economy has become one of the important areas under anti-monopoly supervision. This is consistent with the trend in other jurisdictions around the world, where regulators continue to strengthen the supervision of the digital economy. The platform guidelines consider the complexity of the platform economy, and elaborate on the key and difficult points of defining its relevant markets, which provide specific guidance for conducting economic analysis to such areas.

Meanwhile, the guidelines specify that the relevant markets are usually defined when investigating monopoly agreements in the platform economy, reviewing cases of abuse of market dominance, and conducting anti-monopoly reviews on undertaking concentration. This shows that the definition of the relevant markets still occupies an important position in the antitrust analysis framework in the platform economy. When carrying out the alternative analysis of market definition, the economic characteristics of the platform economy – such as multilateral markets, network effects, lock-in effects, and cross-border competition – need to be combined to analyze the demand substitution and supply substitution.

5 SAMR, “Anti-Monopoly Guidelines for Intellectual Property Rights,” September 18, 2020, http://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918_321857.html.

6 SAMR, “Announcement of SAMR on Soliciting Public Opinions on the Antitrust Guidelines for the Platform Economic Industry (Draft for Public Comments),” November 10, 2020, http://www.samr.gov.cn/hd/zjdc/202011/t20201109_323234.html.

7 SAMR, “Antitrust Guidelines for the Platform Economic Industry,” February 7, 2021, http://gkml.samr.gov.cn/nsjg/fldj/202102/t20210207_325967.html.

The platform guidelines clarify the forms of monopoly agreements, explain that operators might use technical means, data, algorithms, platform rules, and the like to reach horizontal or vertical monopoly agreements, and provide analysis ideas. Furthermore, the guidelines specifically interpreted the hub-and-spoke agreement. Addressing abuse of market dominance, the guidelines list in detail the considerations for determining or presuming that an operator has a dominant market position, as well as the specific behaviors of abuse of market dominance. Among the forms of abuse, “sales below cost” fits the concept of predatory pricing in economic analysis. Moreover, in the “refusal to deal,” the guidelines put forward the concept of whether a platform constitutes an essential facility, and list considerations for judgment, such as data possession and the substitutability of other platforms. In the “restricting transactions,” the guidelines specify that the “either/or” behavior that frequently occurs in the domestic internet industry might comprise a restricted transaction and must be prohibited, and particularized the manifestations of the transaction restriction behaviors of platforms.

The platform economy is complex, involving multiple transaction chains and various dynamic innovations. Thus, when evaluating the anticompetitive effects of undertakings with dominant market positions, one can rely on economic analysis and guidance from the guidelines to comprehensively evaluate the impact on consumer welfare.

Antitrust Guidelines for Active Pharmaceutical Ingredients (API)

In October 2020, SAMR published the draft Antitrust Guidelines for Active Pharmaceutical Ingredients (API) for public comment.⁸ The draft guidelines elaborate on the specifics and analysis methods of relevant market definitions, monopoly agreements, and abuse of dominant market positions in combination with the particularity of the API field, providing a basis for antitrust enforcement in the API industry.

Regarding the concentration of undertakings, SAMR made explicit provisions for the above-mentioned specific industries according to the antitrust guidelines. In addition, SAMR issued the “Interim Provisions on the Review of Concentration of Undertakings” and the “Anti-Monopoly Compliance Guidelines for Operators” based on the AML to standardize and guide the relevant actions of business operators.

⁸ SAMR, “Announcement of SAMR on Soliciting Public Opinions on the Antitrust Guidelines for Active Pharmaceutical Ingredients (Draft for Comments),” October 13, 2020, http://www.samr.gov.cn/hd/zjdc/202010/t20201013_322278.html.

The Platform Guidelines specified that “the concentration of undertakings involving the VIE structure falls within the scope of the anti-monopoly review.” Moreover, the leniency and the commitments guidelines released in 2020 implement the principle of “promoting enterprise antitrust compliance through competition advocacy rather than punishment,” encourage business operators to actively cooperate with law enforcement agencies by proactively reporting violations or committing rectification to obtain penalty reductions, and save the investigation time and energy of law enforcement agencies.

Antitrust Enforcement Achievements

Concentration of Undertakings

Overview of Law Enforcement

In 2020, SAMR approved a total of 458 cases of mergers, including 4 cases approved with additional conditions and 454 cases approved unconditionally. Among the cases cleared without conditions, the number of simple cases reached 375, accounting for 82.6% of all unconditional approval cases.⁹ SAMR also issued administrative decisions in 13 cases that failed to declare concentrations. Among them, SAMR imposed top-level penalties for Hive Box, China Literature, and Alibaba. These were the first top-level administrative penalties imposed on variable interest entity (VIE) structure companies that did not file the concentration of undertakings required by law.¹⁰

Application of Economic Analysis in the Review and Approval of Undertaking Concentration Cases with Additional Conditions

Through the four cases of concentration of undertakings that were conditionally approved by SAMR, it was found that SAMR used economic analysis methods to examine the competition effects of concentrated transactions, and implemented remedies accordingly. For example, on

⁹ The statistics are from cases made public by SAMR, <http://www.samr.gov.cn/fldj/ajgs/>.

¹⁰ SAMR, “The person in charge of SAMR answered the reporter’s questions on the punishment of three cases that failed to declare in accordance with the law: Alibaba’s acquisition of Yintai Retail, China Literature’s acquisition of New Classics Media, and Hive Box’s acquisition of China Post Smart Delivery,” December 14, 2020, http://www.samr.gov.cn/xw/zj/202012/t20201214_324336.html.

February 28, 2020, SAMR approved the case of Danaher Corporation (Danaher) to acquire GE Biopharma, the life sciences biopharmaceutical business of General Electric's healthcare division, with conditions. During the review of the case, SAMR solicited opinions from multiple professional organizations, and hired third-party economists to conduct professional research and analysis on the case in terms of relevant markets definition, market players, market structure, and industry characteristics.

This case defined 25 relevant product markets, and SAMR analyzed and identified 10 relevant markets where the transaction might have the effect of eliminating and restricting competition. In the analysis of competition in the 10 markets, SAMR used the Herfindahl-Hirschman Index (HHI) to analyze the changes in the concentration of each market before and after the acquisition and its impact on competition. Danaher would gain a dominant position in the global label-free detecting market after the acquisition. The economic analysis revealed that the price of related products after the acquisition had a high upward stress index; thus, Danaher was likely to adopt a strategy to raise prices. From the perspective of market structure, experts analyzed the changes in the vertical market structure before and after the acquisition, indicating that the acquisition would eliminate the close competitive relationship between Danaher and its takeover target, reduce the choice of downstream pharmaceutical companies, and undermine market competition.¹¹

In another case, SAMR approved the acquisition of WABCO Holdings Inc. (WABCO) by ZF Friedrichshafen AG (ZF) with conditions in May 2020, and hired independent third-party consulting agencies to conduct an economic analysis of the competition issues. The analysis found that, after the merger, ZF had the motivation to implement input foreclosure and gain profits. This is reflected in the quote, "in the short term, whether it is in the global market or the Chinese market, even if the entity after merger completely loses its profits in the upstream market after the implementation of the input foreclosure strategy, it can also make up for the upstream loss by capturing enough sales from competitors in the downstream, thereby having the motivation to implement the input foreclosure strategy."¹²

11 SAMR, "Announcement of SAMR on the conditional approval of the Danaher v. GE Biopharma case," February 28, 2020, http://www.samr.gov.cn/fldj/tzgg/ftjz/202002/t20200228_312297.html.

12 SAMR, "Announcement of SAMR on the conditional approval of the WABCO v. ZF case," May 15, 2020, http://www.samr.gov.cn/fldj/tzgg/ftjz/202005/t20200515_315255.html.

In addition, after the merger, ZF would make more profits and had stronger motivation to implement vertical input foreclosure in the Chinese market. This conclusion is drawn from relevant econometric quantitative analysis, determining that the entity after merger needs to cut its downstream supply by more than 15–20% in the Chinese market, but in the global market, the above-mentioned percentage has to increase to 25–30%.¹³

The above cases indicate that SAMR is increasingly inclined to introduce rigorous economic analysis methods to assess the impact of market competition after the concentration of undertakings. In particular, economic analysis plays a key role in the review of vertical M&As and conglomerate M&As, assisting regulatory agencies in quantifying the motives and capabilities of the entity after the merger to implement foreclosure strategy, thereby showing whether it will cause significant exclusion and elimination of market competition.

Investigation of Monopoly Agreement Cases

In 2020, law enforcement agencies continued to strengthen their investigation and handling of monopoly agreement cases. Throughout the year, the agencies investigated and punished 13 cases of horizontal monopoly agreements, of which 11 involved price monopoly agreements such as joint price increases and fixed prices, six involved market segmentation, and two involved restrictions on production or sales. Of the 13 cases, the monopoly agreements in five cases were reached by relevant industry associations, and one case was conducted under the leadership of relevant government authorities.

The 2020 investigation of monopoly agreement cases showed the following characteristics:

1. From the industry perspective, the law enforcement agencies focused on people's livelihoods and important economic fields. The industries involved in the cases included automobiles, fire departments, insurance, liquefied gas, building materials, and semiconductors, to name a few, which reflected the determination of the agencies to put people first and effectively protect the rights and interests of consumers.
2. In terms of the types of cases, the law enforcement agencies were concerned about horizontal monopoly agreements, particularly those involving price monopoly, and

¹³ SAMR, "Announcement of SAMR on the conditional approval of the WABCO v. ZF case," May 15, 2020, http://www.samr.gov.cn/fldj/tzgg/ftjtz/202005/t20200515_315255.html.

continued to strengthen regulation of industry associations. Of the 13 cases investigated and handled throughout the year, business operators jointly colluded on product prices in 11 cases, and industry associations organized business operators to conduct monopolistic behaviors in five cases.

3. From the perspective of penalties, the law enforcement agencies took lenient and strict measures simultaneously. The agencies increased fines and penalties, but gave lenient treatment to companies involved in monopoly cases that voluntarily filed and provided evidence, in order to encourage these companies to actively cooperate with the agencies in their investigations. In 2020, the law enforcement agencies gave leniency exemption from punishment in two cases since the companies involved took the initiative to report the situation of reaching a monopoly agreement, and provided important evidence for the investigations.

Since the 13 monopoly agreement cases investigated and punished by SAMR all involved horizontal monopoly agreements, the identification and analysis were mainly based on the facts of the agreements, and not much economic analysis was involved.

Investigation of Abuse of Market Dominance Cases

In 2020, SAMR investigated and dealt with seven cases of abuse of market dominance. The cases covered sectors such as the funeral, gas, waterpower, and active pharmaceutical ingredients (API) industries, as well as other fields related to the national economy and people's livelihoods. The actions involved in the cases were mainly transaction restrictions, additional unreasonable trading conditions, and bundling and tying.

Law enforcement agencies continuously strengthened antitrust law enforcement in the fields of people's livelihoods and public utilities to effectively protect the rights and interests of consumers. For example, in the case of market dominance abuse by three calcium gluconate API distributors, SAMR fined the enterprises involved RMB 325.5 million, the largest fine for antitrust enforcement in the API industry since the implementation of the AML.

Likewise, the law enforcement agencies also strengthened penalties for actions that hinder antitrust investigations. Across the course of the year, there was a total of two cases in which enterprises and individuals transferred, destroyed, or concealed materials involved in the cases and impeded the investigation. Law enforcement agencies made severe punishments in these cases, and fined individuals who refused or hindered the investigation and law enforcement.

Since the promulgation and implementation of the AML, there have been six cases of additional fines for obstructing antitrust investigations, of which one-third occurred in 2020.

Business operators in the industries where abuse of market dominance cases arose generally had significant market dominance. Therefore, the substitutability analysis methods were widely adopted in the above cases to define relevant markets, instead of using more complicated quantitative analyses. Market regulators primarily evaluated the effects of different forms of abuse on competition from a qualitative perspective. As China's AML enforcement continues to strengthen, economic analysis will inevitably be introduced in more and more abuse cases to assist in evaluating the effects on competition.

In addition, SAMR stated that it had commenced an antitrust investigation into a well-known internet platform in December 2020,¹⁴ indicating that the internet platform business has become one of the key areas under antitrust supervision. For abuse cases involving internet entities, economic analysis methods may be introduced along with ideas to define relevant markets, market dominance position, and the anti-competition effects of abuse due to the complexity of the internet industry.

Antitrust-Related Judicial Litigation Cases

Summary of Characteristics of Antitrust Litigation Cases

In 2020, there were more than 100 civil and administrative lawsuits involving the AML. The number of civil litigation cases in which individuals sued the monopoly of internet enterprises increased, and civil disputes over issues such as standard essential patent (SEP) jurisdiction and anti-suit injunctions occurred frequently. There have also been antitrust lawsuits by companies against industry associations.

In the internet field, the number of antitrust lawsuits increased, as did the participation of individual consumers in litigations. China's internet economy has developed steadily, and the

¹⁴ SAMR, "Investigation of SAMR into the suspected monopoly of the Alibaba Group," December 24, 2020, http://www.samr.gov.cn/xw/zj/202012/t20201224_324638.html.

market concentration of the online economy has gradually grown. Under such circumstances, antitrust lawsuits against major internet enterprises have increased. The plaintiffs in those litigation cases consist of not only enterprises, but, increasingly, individuals as well. For example, when Meituan canceled its Alipay payment channel, a consumer sued Meituan for abusing its market dominance in 2020 because he could no longer use Alipay on the Meituan software. The case was under examination by the Beijing Intellectual Property Court in December 2020.

There will be more civil lawsuits against internet companies and more protection on consumer rights expected in the future, as the attention on antitrust in the internet field continues to rise, and the newly revised AML specially mentions monopolies in the internet industry. At the same time, the new characteristics of the internet industry also present new challenges for the rulings of related cases, and the demand for economic analysis has increased. For example, when livestream gaming platform Guangzhou Huaduo Network TechnologyCo (Huaduo) sued Guangzhou Netease Computer System Co. (NetEase) for abuse of market dominance, the case drew support from ideas and methods of economic analysis, which helped to settle disputes regarding the determination of relevant markets and market dominance in the internet field.

Furthermore, the nature of industry associations in antitrust litigations was clarified in 2020, and antitrust lawsuits against industry associations have increased. Industry associations are non-government, non-profit, intermediary, and have certain public power.¹⁵ Such “quasi-governmental” organizations are approved by relevant government departments, and it has been difficult to establish their status and nature in antitrust litigation.

For example, eight KTV companies sued the China Audio-Video Copyright Association (CAVCA) in 2020 for attaching unreasonable treaties. The Beijing Intellectual Property Court held that CAVCA, officially approved by the National Copyright Administration of the People’s Republic of China, provided audio-visual services in its own name, which belonged to the scope of operators regulated by the AML. CAVCA was determined to have a dominant market position.¹⁶ Similarly, Beijing Wangdian Botong and Xiangshan Jieda sued China Internet Network Information Center (CNNIC) for refusal to deal without legitimate reasons. These two civil

15 Fanmei Meng, “The plaintiff qualification of Industry Association in Administrative Litigation,” ChinaCourt, April 11, 2010, <https://www.chinacourt.org/article/detail/2010/04/id/403581.shtml>.

16 Xiaoyu Fan, “Judgment of Eight KTVs v. CAVCA: CAVCA Did Not Abuse Market Dominance,” June 8, 2020, <https://www.chinacourt.org/article/detail/2020/06/id/5285964.shtml>.

litigation abuse of market dominance cases make it clear that the AML may regard industry associations as operators.

In 2020, China took a new step in the exploration and practice of SEP-related disputes. In its first written ruling, the Chinese court confirmed its jurisdiction over the global licensing rate of SEPs, as the Shenzhen Intermediate Court rejected Sharp Corporation's demurring at the jurisdiction in the *OPPO v. Sharp* case.¹⁷ In terms of the ruling of anti-suit injunctions involving SEPs, the Intellectual Property Court of the Supreme People's Court of China made the first SEP anti-suit ruling in 2020 in the case of *Huawei v. Conversant*, which confirmed non-infringement of patent rights and SEP licensing disputes.¹⁸

Application of Economic Analysis in Typical Cases

Some plaintiffs or defendants hired economists as experts to assist witnesses to submit economic analysis reports in some typical litigation cases judged by the court in 2020. The court also used economic analyses to demonstrate certain specific issues in its judgment, as exemplified in the following typical cases.

In May 2020, the Higher People's Court of Guangdong Province made a final judgment in the case of *Huaduo v. NetEase* for monopoly and unfair competition, ruling that NetEase did not have a dominant market position, rejecting the appeal request by Huaduo, and upholding the first-instance decision.¹⁹ In this case, the plaintiff Huaduo is a technology company operating a livestream gaming platform YY, while the defendant NetEase is a well-known large-scale game developer in China.

The dispute between the two parties originated from the popular online game "Fantasy Westward Journey 2" developed by NetEase, which was rebroadcast on the YY game live broadcast platform in 2012. In 2014, NetEase sued Huaduo for infringing the copyright of the

17 IP Economy, "Intermediate People's court of Shenzhen ruled in *OPPO v. Sharp* case: First Confirmation of Jurisdiction Over Global License Rates of SEPs," December 4, 2020, http://www.ipeconomy.cn/index.php/index/news/magazine_details/id/2174.html.

18 Qishan Zhao, Zhe Lu, "Chinese Court Makes the First SEP Injunction: Conversant is Prohibited from Applying for Enforcement of the Injunction Against Huawei Issued by the German Dusseldorf District Court," LexField, September 22, 2020, http://www.lexfieldlaw.com/cn/?c=n&a=Publication_detail&myid=8&id=102.

19 Higher People's Court of Guangdong Province, "Final Civil Judgment on Abuse of Dominant Market Position and Unfair Competition Disputes between Huaduo v. NetEase," (2018), Guangdong Final Civil Judgment No. 552, August 4, 2020, <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=51aac1bb823d47cbb575ac0d012414c6>.

game.²⁰ Huaduo immediately filed a monopoly lawsuit against NetEase. NetEase was accused of suspected abuse of market dominance, including prohibiting users from livestreaming the game “Fantasy Westward Journey 2” on the YY live broadcast platform, and tying the game with NetEase’s self-operated CC live broadcast platform.²¹

In this monopoly case, both Huaduo and NetEase hired economic experts to assist witnesses to issue economic analysis opinions on the definition of relevant markets. Huaduo’s expert witnesses believed that the relevant market should be defined as the “Fantasy Westward Journey 2” online game service market, while NetEase’s expert believed that the relevant market should be defined as the entire online game service market. Ultimately, the court of second instance failed to adopt the market definition advocated by the experts of Huaduo and ruled that the relevant market should be the online game service market in mainland China.²²

In the *NetEase v. Huaduo* for copyright infringement case, which was heard in parallel with the above monopoly case, both parties also hired economists to provide economic analysis reports. Huaduo’s expert concluded that the statistical analysis results of questionnaires that the game live broadcast behavior of Huaduo would not substitute the game itself, but would benefit the promotion of the game; the value created in the game live broadcast was much higher than the value created in the game itself.

However, NetEase’s expert held that games and live broadcasts were both substitutive and complementary, which was very complicated. They must analyze specific problems without generalization. They also pointed out issues in the questionnaire survey provided by Huaduo from the perspectives of questionnaire design, sample selection, statistical analysis, etc. The court of second instance did not adopt the analysis conclusion from Huaduo’s expert, and

20 Intellectual Property Court of Guangzhou, “Civil Judgment of the First Instance on Copyright Infringement Dispute and Unfair Competition Dispute Between NetEase v. Huaduo,” (2015) Guangdong Intellectual Property Court’s First-Instance Copyright Judgment No.16, October 24, 2017, <http://www.chinaiprlaw.cn/index.php?id=4998>.

21 Xu Jiang, Shengcheng Xiao, “Huaduo v. NetEase: Unsettled Disputes,” July 18, 2018, <https://www.iphouse.cn/cases/detail/qkp7rzvvy9enlnrnowp60o8dg5x21m43.html>.

22 High People’s Court of Guangdong Province, “Civil Judgment of the Second Instance on Copyright Infringement Dispute and Unfair Competition Dispute Between NetEase v. Huaduo,” (2018) Guangdong Final Civil Judgment No.137, December 28, 2019, <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=8c109eabfe124d6a987eab3100fe7b13>.

eventually ruled the company's alleged actions constituted copyright infringement. NetEase was awarded RMB 20 million in compensation.²³

In August 2020, the Higher People's Court of Shanghai Province made a second-instance judgment on the dispute between the plaintiff Wuhan Hanyang Guangming Trading Co., Ltd. (Guangming) and the defendant Shanghai Hantai Tire Sales Co., Ltd. (Hantai) over a vertical monopoly agreement and abuse of market dominance. Ultimately, the court of second instance rejected the appeal and upheld the original judgment.

In the second-instance judgment, the court clearly stated that "economics is a science that studies and reveals economic laws. If we combine economic theory to analyze the AML issues, we will gain a proper understanding of the legislative purpose of relevant laws and regulations in individual cases, thus accurately apply the law and further promote the sound development of the economy."²⁴ The court adopted the principle of rationality analysis, and explicated the economic effects of setting a "minimum resale price." The anticompetitive effects, such as collusion on price and restriction on competition, as well as the procompetitive effects, such as elimination of externalities and promotion of efficiency of resource allocation, were considered. The court ruled that Hantai did not eliminate or restrict competition based on the above analysis and facts.

Concluding from the above cases, in antitrust litigations, the professional opinions of economic experts or the principles and ideas of economics provide vital reference value to the court for the final ruling on important issues such as the definition of relevant markets and the anti-competition effect of the accused behavior.

Summary

23 High People's Court of Guangdong Province, "Civil Judgment of the Second Instance on Copyright Infringement Dispute and Unfair Competition Dispute Between NetEase v. Huaduo," (2018) Guangdong Final Civil Judgment No.137, December 28, 2019, <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=8c109eabfe124d6a987eab3100fe7b13>.

24 High People's Court of Shanghai, "Civil Judgment of the Second Instance of Monopoly Agreement Dispute Between Guangming v. Hantai," (2018) Shanghai Final Civil Judgment No.475, August 26, 2020, <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=3877381d5318488188d0ac2201197577>.

In 2020, China’s antitrust work ushered in a series of important innovations and took a solid step forward. At the legislative level, regulators launched the revision of the AML and promulgated supporting policy guidelines. At the law enforcement level, authorization of local law enforcement agencies was reinforced, and law enforcement in industries involving people’s livelihoods was strengthened. At the judicial litigation level, guiding judgments for all kinds of antitrust cases were issued.

At the meetings of the Political Bureau of the CPC Central Committee and the Central Economic Work Conference, “strengthening of anti-monopoly and the prevention of the disorderly expansion of capital” was listed as one of the eight key tasks in 2021. Under these instructions, China’s law enforcement agencies and judicial agencies will continue to focus on the overall deployment of anti-monopoly in 2021, promoting the perpetual development of anti-monopoly practices and the continuous construction of a fair and competitive market environment, and contribute to China’s 14th Five-Year Plan.

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