China Competition Policy & IP

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TABLE OF CONTENTS

Meetings/Seminars/Projects 2

DRC Holds a Seminar on Market Cultivation in Beijing 2

Big Tech Platforms Sign Antitrust “Self-Discipline” Pledge 3

Regulatory News 5

SAMR Bans Huya and DouYu Merger 5

Tencent Ordered to Give Up Exclusive Online Music Copyrights 6

SAMR Issues Implementation Rules for the Fair Competition Review System 7

Provisions on Administrative Penalties on Illegal Pricing Submitted for Public Comment 8

SAMR Issues Administrative Penalties Related to 22 Cases of Illegal Concentration of Undertakings in the Internet Sector 8

Learn More 9

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Meetings/Seminars/Projects

DRC Holds a Seminar on Market Cultivation in Beijing

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On July 10, 2021, the Development Research Center of the State Council (DRC) held a seminar on cultivating market entities and optimizing the business environment in Beijing. Zhang Gong, director of the State Administration for Market Regulation (SAMR), delivered the keynote speech.

Mr. Zhang said that, despite the severe impact of the pandemic, various market entities have effectively strengthened the resilience of the economy and employment. Since the 18th National Congress of the Chinese Communist Party in 2012, the number of domestic market entities has significantly increased from 55 million to 144 million. Meanwhile, the number of "individual industrial and commercial households" has also grown – to more than 96.7 million – and further contributes to grassroots employment and enterprise collaboration.

Mr. Zhang highlighted three key factors that have, and will continue to, contribute to economic recovery for market entities:

1. **Macro policies aimed at micro subjects, which promoted economic growth and employment**. The state has implemented a series of policies – such as tax reductions, fiscal funds, and an inclusive financial system – that directly helped market entities. SAMR will work with relevant departments to refine policies that support individual business owners, and regulate the government's changing standards on enterprises.
2. **A good business environment that stimulated market vitality, which in turn enhanced economic efficiency**. For example, market regulators have promoted fundamental reforms on the business entry system, implementing a change from registered to subscribed capital and optimizing and simplifying processing services in order to shorten the business registration period. To address difficulties in the business registration process, SAMR is conducting reforms to clearly separate business licenses from business permits in specific industries, and will establish a management system to list and organize all licenses required for business registration.
3. **Fair regulation ensured fair competition, which has raised market expectations**. Market regulators have comprehensively applied laws and regulations in anti-monopoly, anti-unfair competition, consumer rights protection, and the like to resolutely prevent the disorderly expansion of capital, monopolies, and unfair competition behaviors, and build a grand framework for intellectual property protection.

Mr. Zhang said that China's large domestic market is equipped with self-contained industries, hard-working and intelligent labor resources, and innovative and promising entrepreneurs. With the continuous optimization of the business and policy environment, various market entities will hold out a broader development prospect. Market authorities will adhere to "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era," thoroughly implement the decisions and deployments of the Party's Central Committee and the State Council, and provide better services and safeguards to the investment and prosperity of various market entities.

Big Tech Platforms Sign Antitrust "Self-Discipline" Pledge

Read the Chinese version here

On July 13, 2021, during a China Internet Conference forum at the China National Convention Center in Beijing, 33 tech giants signed the "Convention on Anti-Monopoly Self-Discipline for Internet Platform Operators." By signing the voluntary pledge, the internet companies – including Alibaba, Tencent, ByteDance, and Huawei – signaled their commitment to maintaining fair competition, emphasizing consumer protection, and strengthening independent innovation.

The pledge was drafted by the Intellectual Property Center of the China Academy of Information and Communications Technology (CAICT), with input from several well-known internet platform companies, after extensive research. It encourages tech companies to actively promote self-discipline and create a fair competition environment across the industry.

The convention consists of five chapters, formed around general provisions, basic principles, self-discipline, implementation, and annexes. There are 14 clauses in total, with most of them addressing monopoly agreements, abuse of market dominance, and/or the concentration of undertakings.

In terms of monopoly agreements, the pledge stipulates that competitive internet platforms shall not use technical means, platform rules, or other methods to reach horizontal monopoly agreements (such as price fixing, market division, and boycotts) or vertical monopoly agreements (such as resale price fixing or minimum resale price restrictions).

The pledge lists four types of market dominance abuse conducted by the dominant internet platforms:

1. Restricting transactions without justifiable reasons, such as "either-or" or exclusive dealing
2. Refusing to deals with its trading counterparty
3. Bundling or attaching unreasonable trading conditions

4. Imposing differential prices or other trading conditions on similarly situated counterparties by using big data and algorithms to analyze their ability to pay, consumption preference, usage habits, etc.

According to the pledge, internet platforms will carry out investments and mergers and acquisitions in accordance with the law, maintain the orderly expansion of capital, and avoid concentrations that have or may have the effect of excluding or eliminating competition. Internet platforms should take the initiative to file to SAMR for any merger and acquisitions that meet the filing standards set by the State Council.

In addition, the Intellectual Property Working Committee of the Internet Society of China will organize the implementation of the pledge, and supervise and inspect the compliance of the participating internet platforms.

Regulatory News

SAMR Bans Huya and DouYu Merger

Read the Chinese version here

On July 7, 2021, SAMR announced the prohibition of the proposed merger of Huya and DouYu – two of China's leading livestream gaming firms, which both include global tech giant Tencent among their investors – following an antitrust investigation. This is the first banned merger case in the internet sector since the Anti-Monopoly Law was first passed in 2007.

According to the agreement, Tencent, which has sole control of Huya with 36.9% of shares and joint control of DouYu with over one-third of the shares, intended to acquire all DouYu's shares through Huya. Had the merger been conducted, Tencent would have gained sole control of the merged entity after the transaction.

SAMR defined several relevant markets in this case, including the short video and the game, entertainment, and e-commerce livestreaming markets where Huya horizontally overlaps with DouYu. From the vertical perspective, SAMR defined the upstream online game operational service market where Tencent, the sole controller of Huya and the co-controller of DouYu, operates its business.

SAMR based its decision to prohibit the deal based on two concerns:

1. **The concentration would have strengthened Tencent's dominant position in China's game livestreaming market.** In terms of turnover, Huya and DouYu accounted for more than 40% and 30% of the market respectively, totaling more than 70% together. Before the transaction, there was still certain competition between them, so their concentration would have completely eliminated competition, strengthened Tencent's market dominance, and further reduced consumers' and streamers' bargaining power and rights to choose between the platforms.

2. **The concentration would have given Tencent the ability to implement a two-way vertical foreclosure in the upstream gaming market and downstream game livestreaming market.** In the online game operational services market, Tencent has the biggest market share, with more than 40%. In the downstream market, the merged entity's market share would have exceeded 70% in terms of turnover. After the concentration, Tencent would have had the ability and incentive to implement foreclosures on gaming copyright licenses against downstream competitors by using its gaming copyright licenses. In addition, it could have also carried out customer foreclosures against its upstream gaming competitors by using its promotion channels of games downstream.

Tencent Ordered to Give Up Exclusive Online Music Copyrights

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On July 24, 2021, SAMR announced that Tencent has been ordered to give up its exclusive music licensing rights and received a fine of RMB 500,000 for violations of China's anti-monopoly laws. The penalty came months after the regulatory authority launched an investigation into the tech giant's alleged illegal acquisition of China Music Corporation in July 2016.

In accordance with the Anti-Monopoly Law, SAMR investigated and assessed relevant factors such as the market share, market power, and the degree of concentration of Tencent and China Music in the country's online music playing platform market, and the impact of this concentration on market entry and consumers.

In 2016, Tencent and China Music possessed 30% and 40% of shares, respectively, in the relevant market. By acquiring its main competitor, Tencent increased its market share and gained control of over 80% of exclusive music resources, meaning the concentrated entity could induce upstream copyright holders to grant it more exclusive agreements or more favorable trading conditions than its competitors. Such a concentrated entity could also raise market entry barriers by enforcing copyright payment models as high advance payments, which may have had the effect of excluding or restricting competition in the online music market.

Referring to Article 48 of the Anti-Monopoly Law and Article 57 of the Interim Provisions on the Review of Concentrations of Undertakings, SAMR ordered Tencent and its affiliates to restore competition by giving up exclusive music rights within 30 days, stop their current payment model of copyright fees such as high prepayments, and not require upstream copyright holders to grant them more favorable conditions than their competitors without justifiable reasons. For the next three years, Tencent will be expected to report annually to SAMR on the fulfillment of its obligations, and SAMR will strictly monitor its performance in accordance with the law.

This case is the first ruling in which necessary measures against the illegal concentration of undertakings were taken to restore market competition since the implementation of the Anti-Monopoly Law. Ordering Tencent to end its exclusive copyright is intended not only to restore the order of competition in the online music market, but also to lower the barriers to market entry and provide competitors with fair access to upstream copyright resources.

The ruling will likely move the market's focus away from trying to use a capital advantage to grab copyright resources, to instead focus on improving service quality and user experience. It is also conducive to fostering new market entrants and creating a more fair competitive environment for existing enterprises, and safeguarding consumers' rights to choose. This will ultimately promote the standardized, innovative, and sound development of the online music industry.

SAMR Issues Implementation Rules for the Fair Competition Review System

Read the Chinese version here

On July 8, 2021, five governmental departments – including SAMR, the National Development and Reform Commission, the Ministry of Finance, the Ministry of Commerce, and the Ministry of Justice – released the "Implementation Rules for the Fair Competition Review System," a revision of the review system criteria first issued in 2016. In the revision, the regulators amended or added provisions related to the review mode and standards, supervision means, and other aspects. The authorities will promote the in-depth implementation of the review system to maintain a unified national market and fair competition.

The Implementation Rules consists of 31 articles across seven chapters: the General Provisions, Review Mechanism and Procedures, Review Standards, Exceptions, Third-Party Assessment, Supervision and Accountability, and Annexes. In response to the Central Committee's requirements, the revision focuses on establishing a fair competition review framework, enhancing its uniformity with the Anti-Monopoly Law, regulations on optimizing business environments, and other existing laws and regulations. It also aims to improve the efficiency and quality of the review system, the unfulfillment of supervision and assessment, and other outstanding issues in order to strengthen the rigid constraints of the system.

The Implementation Rules have three main highlights:

1. **Greater integration efforts**. The rules emphasize the function of inter-ministerial joint meetings and local people's governments of taking the initiative in conducting competition reviews, and of promoting the implementation of the review mechanism with greater force.

2. **Higher review standards.** The rules set more detailed review standards, focused on issues reflected strongly by enterprises such as barriers to the equal and convenient exit of the market, exclusive trading and local protection disguised in the form of subsidies, and obstacles to the equal access of factors of production. It calls for timely remedies to the gaps and loopholes in existing rules, and effectively enhances the systematic and targeted nature of the review system.

3. **More stringent supervision and assessment.** The rules give full effect to the incentive and restraint role of supervision and random inspection. To ensure that the Party's Central Committee and the State Council's decisions are implemented, authorities are encouraged to conduct random inspections in industries and regions where the abuse of administrative power to exclude and eliminate competition is common.

The introduction of the Implementation Rules is of great significance to promote the formation of an efficient, standardized, and competitive domestic unified market, and to build a market-oriented, legitimate, and international business environment.

Provisions on Administrative Penalties on Illegal Pricing Submitted for Public Comment

Read the Chinese version here

On July 2, 2021, SAMR submitted a revised draft of the Provisions on Administrative Penalties on Illegal Pricing for public comment. The draft rules, which address violations such as big data price discrimination and selling below cost, were created to punish illegal pricing practices by e-commerce platforms and protect the interests of consumers.

The draft stipulates that authorities will first issue warnings and may then impose fines of 0.1–0.5% of an e-commerce platform's sales from the previous year in cases where platforms use big data, algorithms, or other technical means to set differential prices on the same product or service under the same transaction condition based on consumers' preferences, transaction habits, or other factors other than the cost and legitimate marketing strategies. Illegal incomes will be confiscated, and if the violations are serious, platforms will be ordered to suspend business for rectification or have their business licenses will be revoked.

The draft also addresses predatory pricing and other unfair competition activities. It stipulates that if operators dump goods at low prices and disrupt the business order to exclude competitors or monopolize the market, the authorities will order rectification, confiscate their illegal incomes, and may impose a fine that could be up to five times their illegal incomes.

SAMR Issues Administrative Penalties Related to 22 Cases of Illegal Concentration of Undertakings in the Internet Sector

Read the Chinese version here

On July 7, 2021, SAMR issued administrative penalties to several internet companies after they failed to report a combined 22 illegal merger and acquisition deals to SAMR, violating the Anti-Monopoly Law. Each company was fined RMB 500,000 per illegal undertaking.

Among the 22 deals investigated, eight involved Didi, six involved Alibaba, five involved Tencent, two involved Suning, and one involved Meituan. The earliest deal was Tencent's acquisition of equity in Cheetah Mobile in 2011. In the case of Beijing Chesheng Technology Co., Ltd. (a wholly-owned subsidiary of Didi) and Zhejiang Skio Matrix Co., Ltd. establishing a joint venture, Didi only held 3.23% of the joint venture's shares and was still deemed to have had joint control. The penalty decision letter did not state whether the parties had any special arrangements.

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