

China Competition Policy & IP

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Meetings/Seminars/Projects

Regulators Hold Second Joint Conference on the Coordination and Supervision of New Transportation Business Forms

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On July 30, 2021, the Inter-Ministerial Joint Conference on the Coordination and Supervision of New Transportation Business Forms was held. It was this year's second meeting to address the regulation of ride-hailing platforms, network freight, and other new forms of transportation. Regulators from eight different agencies summarized the work done in the first half of 2021, outlined plans for the rest of the year, and reviewed the "Opinions on Strengthening the Rights and Interests of Employees in New Transportation Business" guidelines aimed at protecting workers in new transportation businesses. Minister of Transport Li Xiaopeng attended the meeting and stressed the importance of strengthening the regulation and supervision of new transportation businesses.

Regulators at the meeting pointed out issues arising from the rapid development of new transportation business forms – including the infringement of drivers' rights and interests by ride-hailing platforms and the unregulated operation of some freight platforms – that have posed hidden risks to the security and stability of the industry. The conference's eight members will be required to strengthen risk awareness and better coordinate on both development and security to promote the new transport industry's sound and sustainable development.

Five work priorities have been put forward, including:

1. Improving regulation capabilities, especially those related to anti-monopoly and anti-unfair competition
2. Strengthening the coordination and cooperation of relevant departments
3. Accelerating the regulated development of ride-hailing companies
4. Effectively protecting the rights and interests of practitioners
5. Continuing to improve services for the elderly

State Council Information Office Holds Press Conference on Market Regulation

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On September 6, 2021, the State Council Information Office held a press conference on market regulation and vitality. At the conference, Zhang Gong, director of the State Administration of Market Regulation (SAMR), provided an overview of the progress made in anti-monopoly work, including the progress related to China's platform enterprises. He also outlined the following positive results from recent years, as well as ongoing priorities:

- **Building fair and transparent competition rules.** Some important laws are in the process of being revised, including the Anti-Unfair Competition Law and the Anti-Monopoly Law. In addition, new guidelines have been issued to address the emergence of new economic forms, including the Anti-Monopoly Guidelines for the Platform Economy, the Interim Provisions on Prohibiting Abuse of Market Dominance, and the Measures for the Supervision and Administration of Online Transactions.
- **Strengthening enforcement of the Anti-Monopoly Law.** Several large platforms with “either-or” conduct were investigated and punished in accordance with the law; the exclusive copyright in the field of online music was relieved; and the merger and acquisition cases of platforms have been strictly reviewed. The regulation and enforcement of other unfair competition acts, such as false promotions and price discrimination by means of big data, were also strengthened.
- **Guiding companies to strengthen their compliance awareness.** The authorities held administrative guidance meetings to strengthen supervision on the promotion of events such as the “11.11” online shopping festival, community group purchases, sharing economy, and other key areas of platform competition.

Other speakers at the press conference included Qin Yizhi, deputy director of SAMR; Chen Shifei, deputy director of National Medical Products Administration (NMPA); and Gan Shaoning, deputy director of China National Intellectual Property Administration (CNIPA).

Regulatory News

SAMR Launches Investigation into Auto Chip Distributors Suspected of Price Gouging

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On August 3, 2021, SAMR launched an investigation into chip distributors in the auto industry suspected of price gouging. The investigation, based on price monitoring and reported clues, comes during a global shortage of chips – particularly in the auto industry – that has led to excessive prices in the market.

SAMR will continue to monitor the price of chips and other important commodities in the market and work to further strengthen supervision and enforcement. The agency will investigate and severely punish illegal acts such as hoarding, price gouging, and price collusion.

Draft of the Provisions on Prohibiting Online Unfair Competition Acts on the Internet Submitted for Public Comments

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On August 17, 2021, SAMR released a draft of the “Provisions on Prohibiting Online Unfair Competition Acts on the Internet” for public comments. The regulations – aimed at internet companies – were drafted with the goal to maintain a fair and competitive market order, protect the legitimate interests of operators and consumers, and promote the sustainable and sound development of the digital economy.

According to the draft provisions, online business operators should not use data, algorithms, or other technical means to influence users’ choices or disrupt the operations of website services and products provided by other operators. Additionally, business operators should not use data or algorithms to collect and analyze users’ transaction information, browsing history and frequency, or the brand and value of equipment used in the transaction. Users’ transaction information includes transaction history, willingness to pay, consumption habits, personal preference, affordability, dependency, and credit history. The regulations also stipulate that offering differentiated information to users with the same transaction conditions without proper reasons is not allowed.

SAMR Issues 10 Typical Anti-Monopoly Law Enforcement Cases from 2020

[Read the Chinese version here](#)

On September 3, 2021, SAMR issued 10 typical anti-monopoly law enforcement cases that happened in 2020. A summary of each case is detailed below:

1. **Sichuan Cement Association (SCA) penalized for organizing six cement makers to reach and implement a monopoly agreement.** In October 2016, SCA organized six cement operators to increase the price of bulk cement in Chengdu. They reached and implemented a monopoly agreement to align the time and price adjustment range. In December 2020, the Sichuan Administration for Market Regulation (Sichuan AMR) ordered SCA and the related operators to stop their illegal activities, confiscated their illegal gains, and imposed a total fine of RMB 59.81 million.
2. **Jiaxing Used Car Trade Association fined for organizing nine used car trading companies to reach and implement a monopoly agreement.** In May 2018, the Jiaxing Used Car Trade Association organized its nine member companies to reach an agreement to increase service fees for used cars. The nine companies increased their transaction service fees in accordance with the agreement. In December 2020, the Zhejiang Administration for Market Regulation (Zhejiang AMR) ordered the association and the companies to stop their illegal activities, confiscated their illegal gains, and imposed a fine of RMB 4.41 million.
3. **Heavy fine for abuse of market dominance by Shandong Kanghui Pharmaceutical Co., Ltd. and two other pharmaceutical companies.** From August 2015 to December 2017, three pharmaceutical companies – Shandong Kanghui Pharmaceutical Co., Ltd., Weifang Puyunhui Pharmaceutical Co., Ltd., and Weifang Taiyangshen Pharmaceutical Co., Ltd. – abused their dominant position in the calcium gluconate market in China, selling their products (used for injection to treat calcium deficiencies) at excessive prices, which seriously restricted competition and harmed consumers. In April 2020, SAMR ordered the three companies to cease their illegal activities, confiscated their illegal gains, and issued a total fine of RMB 325.5 million.
4. **Nanjing Water Group Gaochun Co., Ltd. penalized for abuse of market dominance.** Beginning in 2014, Nanjing Water Group Gaochun Co., Ltd. restricted real estate companies to exclusively trade with its designated organizations in local water supply projects. In December 2020, the Jiangsu Administration for Market Regulation (Jiangsu AMR) imposed a fine of RMB 1.82 million on Gaochun due to its exclusive dealing conduct along with ordering the parties to stop the illegal activities.
5. **NVIDIA Corp.’s acquisition of Mellanox Technologies Co., Ltd. approved with restrictions.** In reviewing NVIDIA’s acquisition of Mellanox Technologies Co., Ltd., SAMR found that the

case would have resulted in a concentration that could have restricted or eliminated competition in the graphics processor accelerator, dedicated network interconnection equipment, and high-speed Ethernet adapter markets. SAMR approved the acquisition with additional restrictions in April 2020.

6. **Danaher Corp.’s acquisition of General Electric Co.’s (GE’s) biopharmaceutical business approved with restrictions.** Upon review, SAMR found that Danaher Corp.’s acquisition of GE’s biopharma business, which was part of the GE Life Sciences division, might have eliminated competition in 10 product markets related to biopharmaceutical equipment, including microcarriers, disposable low-pressure liquid chromatography systems, and others. SAMR approved the acquisition with additional restrictions in February 2020.
7. **Alibaba Investment Co., Ltd. fined for acquisition of equity in China Retail Holdings Co., Ltd. (Yintai Group).** Alibaba failed to file with SAMR when it obtained 73.79% of Yintai Group’s equity and completed the transaction in June 2017, constituting an illegal concentration of undertakings, though it did not have the effect of excluding or restricting competition. SAMR imposed a fine of RMB 500,000 in December 2020.
8. **China Literature Ltd. penalized for acquisition of New Classics Media Group Co., Ltd.** China Literature Ltd. – a majority-owned subsidiary of Tencent Holdings Ltd. – acquired the whole shares of New Classics Media in 2018 without filing with SAMR, constituting illegal concentration of undertakings without the effect of excluding or restricting competition. In December 2020, SAMR imposed a fine of RMB 500,000 on China Literature Ltd.
9. **Jining Municipal Finance Bureau investigated for abuse of administrative power to exclude and restrict competition.** After the government issued the Administrative Measures for Public Transport Investment and Subsidy Funds, Jining Municipal Finance Bureau did not provide private bus companies with the same subsidies they provided to state-owned bus companies. Such conduct constituted the abuse of administrative power by the Jining Municipal Finance Bureau, and resulted in restricted competition for the bus companies. Shandong Administration for Market Regulation (Shandong AMR) launched an investigation in September 2020, and Jining Municipal Finance Bureau ultimately made rectifications and standardized its subsidy mechanisms to include private bus companies.
10. **Rectification in Huaihua Bureau of Housing and Urban-Rural Development’s abuse of administrative power to exclude and restrict competition.** Huaihua Ministry of Housing and Urban-Rural Development (Huaihua BOHURD) formulated the Regulation Scheme of the Bottled Gas Industry in Huaihua, which required bottled gas enterprises in the areas to reach a joint operation agreement and integrate their sales businesses. Haihua BOHURD authenticated the relevant agreements signed by the enterprises and rejected any requests to resume independent operation, which constituted an abuse of administrative power and eliminated or restricted competition. In June 2020, the Hunan Administration for Market Regulation (Hunan AMR) referred the matter to Huaihua BOHURD, which completed the rectification.

SAMR Issues Annual Report on China's Anti-Monopoly Law Enforcement

[Read the Chinese version here](#)

On September 3, 2021, SAMR issued the *Annual Report on China's Anti-Monopoly Law Enforcement (2020)*, which presents the major achievements that market regulators have made during the previous year. Despite the challenges presented by COVID-19, China's antitrust enforcement persisted in its efforts to create a fair marketplace, and regulators took several actions to improve the competition governance system, the rule of law, and the international business environment.

The report highlights efforts in three major areas in 2020:

1. **Promoting people's livelihoods with the principle of fairness.** In 2020, the number of filed and closed merger cases increased by 5% and 1.7%, respectively. The government aimed to decrease improper government intervention to promote the integration of regulation and control.
2. **Improving the competition system.** The most important ingredient in a fair market is competition. With that in mind, China has continued to improve the anti-monopoly legal system and strengthen the assessment of market competition.
3. **Improving quality and efficiency of the competition environment.** The plenary meeting of the Anti-Monopoly Committee provided intellectual support for the revision of the Anti-Monopoly Law, as well as the evaluation of competition in key industries and anti-monopoly enforcement and training. In addition, China actively participated in global competition governance and worked with antitrust agencies in other jurisdictions to advance collaboration and exchanges of experience on antitrust.

Industry Updates

Tencent Sues Douyin for Copyright Infringement of the Game *Honor of Kings*

[Read the Chinese version here](#)

On August 4, 2021, a first-instance civil judgment in the copyright infringement and unfair competition dispute between Shenzhen Tencent Computer System Co., Ltd. (Tencent) and Beijing Microseeding Horizon Technology Co., Ltd. – the main developer and operator of the mobile app Douyin, the Chinese version of TikTok – was published online.

Tencent sued Douyin for its copyright infringement of the popular online game *Honor of Kings* and for creating unfair competition, requesting compensation of RMB 5.2 million for economic losses and reasonable rights protection expenses. Tencent alleged that Douyin, despite knowing that publishing short videos of *Honor of Kings* gameplay on their app was unauthorized, allowed and helped users to spread the infringing short videos to attract traffic and refused to remove the content after receiving complaints. At the same time, Tencent alleged, the defendant took advantage of the popularity of *Honor of Kings* to obtain commercial interests, encroached on Tencent's market share of gaming videos, and violated the principle of good faith and business ethics, which constituted unfair competition.

The Shenzhen Intermediate People's Court of Guangdong Province stated in its judgment that Douyin did not take effective measures against the video publishers involved in the infringement within a reasonable timeframe, and did not fully fulfill the takedown obligations, which was a subjective fault and constituted contributory infringement. As for unfair competition, the court ruled that, though there was direct competition between the plaintiff and the defendant in the short game video market, the alleged conduct of Douyin did not constitute unfair competition under the Anti-Unfair Competition Law. Ultimately, the court ruled that Douyin should compensate Tencent RMB 600,000.

In response to the court's judgment, Douyin officially issued a note saying that it had filed an appeal.

China Audio-Video Copyright Association Wins Lawsuit Against Beijing Excellent Union Group

[Read the Chinese version here](#)

On July 29, 2021, the Beijing Intellectual Property Court handed down its first-instance judgment in the dispute over an entrusted contract between China Audio-Video Copyright Association (CAVCA) and Beijing Excellent Union Group Co., Ltd. (EUG).

CAVCA is the sole collective management organization of audio-video copyrights in China, and EUG is the sole organization collecting karaoke copyright royalties in China. The two have cooperated for many years. Since the fourth quarter of 2016, while collecting karaoke royalties entrusted by CAVCA, EUG and its subsidiaries breached their contracts with the association by withholding the collected royalties, which seriously infringed the legitimate rights of the relevant music right holders. In November 2018, CAVCA announced that it had terminated its 10-year partnership with EUG and brought the case to court.

The court ruled that all nine exclusive agreements involving karaoke copyright licensing between CAVCA, the plaintiff, and EUG, the defendant, were terminated as of November 1, 2018, and EUG and its subsidiaries should pay CAVCA a total of RMB 99.76 million of deferred copyright royalties, interests, and damages. EUG was not satisfied with the first-instance verdict and expressed that it would file an appeal.

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