

China Competition Policy & IP

MONTHLY UPDATE

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Meetings/Seminars/Projects

The State Council Information Office Holds Press Conference on Competition Regulation

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On September 6, 2021, the State Council Information Office held a press conference on the status of competition regulation in order to stimulate market vitality, regulate market order, and build a well-off society.

Zhang Gong, director of the State Administration for Market Regulation (SAMR), highlighted three key priority areas that authorities have focused on to improve the effectiveness of competition regulation in China:

1. **Optimizing the legal environment for fair competition and improving the legal system of competition.** In order to adapt to the new requirements of high-quality development and new trends in digital economy development, relevant departments have revised the Anti-Unfair Competition Law, promoted the promulgation of the E-Commerce Law, accelerated the revision of the Anti-Monopoly Law, and formulated nine regulations such as the Interim Provisions on the Review of Concentration of Undertakings and the Measures for the Supervision and Administration of Online Transactions.
2. **Stimulating innovation vitality and enhancing people's well-being.** Since 2018, SAMR has insisted on treating all kinds of market subjects equally, and focused on key areas such as the platform economy, medicine and health care, public utilities, and construction materials. To help maintain a fair and efficient market competition pattern, authorities have investigated and handled 332 monopoly cases, 36,000 cases of unfair competition, 118,000 cases of illegal pricing and fee violations, and 1,788 cases of concentration of undertakings.
3. **Building a strong domestic market and cracking down on local protection and market segmentation.** During the 13th Five-Year Plan (2016–2020), authorities reviewed 857,000 newly introduced policies and measures, and cleaned up the stock of 1.89 million policies. In addition, the authorities ensured the advantages of China's large-scale market by vigorously investigating and dealing with abuses of administrative power such as exclusive dealings, impeding the circulation of goods and factors, and governmental prevention of enterprises from operating in different locations.

The Payment and Clearing Association of China Holds Forum on Anti-Monopoly in the Payment Industry

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On September 24, 2021, the Payment and Clearing Association of China hosted the China Payment and Clearing Forum in Beijing. Fan Yifei, deputy governor of the People's Bank of China, spoke at the forum, emphasizing that all parties in the payment sector should cooperate to promote healthy industry development.

In his speech, Mr. Fan highlighted three high-level improvements that industry participants need to make:

1. **A balance between equity and efficiency needs to be established.** In recent years, the supply capacity of payment services has been greatly improved. However, its development is still unbalanced and insufficient, especially with the disorderly expansion of individual platform enterprises and the increasingly prominent digital divide, which brings challenges to the fair development of the payment industry.
2. **Deeper and more specific anti-monopoly measures are required.** Some payment platforms keep pursuing scale effects, hold multiple financial service licenses, and carry out comprehensive financial services, which can cause huge risks. In the long run, it will not only be detrimental to their own innovation, but can also disrupt the market order and further weaken the overall leading edge of China's electronic payment capabilities.
3. **Payment data transmission and algorithm regulation have a long way to go.** On the one hand, platforms are implementing foreclosures, reporting incomplete and irregular transaction information, and failing to meet the requirements of electronic payment instructions. On the other hand, some enterprises actively use algorithms for deeper data mining and analysis to drive innovation in technological products and business. At the same time, algorithms have become a stealth weapon for some enterprises to implement discriminatory behavior and violate personal privacy.

Mr. Fan also elaborated plans for future development. He stressed that regulators will need to adhere to strict supervision; continue to consolidate the regulatory system of government supervision, industry self-regulation, corporate governance, and social supervision; and crack down on illegal payment activities. Additionally, regulators will improve post-event risk supervision capabilities with technology, and effectively improve the level of payment risk prevention and control.

Regulatory News

Zhejiang AMR Fines Bull for Monopoly Agreements

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On September 27, 2021, Bull Group Co., Ltd. (Bull) announced that the company had received an administrative penalty decision issued by the Zhejiang Administration for Market Regulation (Zhejiang AMR).

The penalty decision shows that, from 2014 to 2020, Bull implemented price-fixed monopoly agreements with distributors in the sales channels of power connection and electricity extension products – such as converters, wall switches and sockets, LED lighting, and digital accessories – nationwide, which excluded and restricted market competition and harmed consumers' interests. Therefore, the company violated Article 14 of the Anti-Monopoly Law, which prohibits operators from entering into the following monopoly agreements with counterparties to transactions. Bull was fined 3% of its 2020 sales in China, which amounted to RMB 294.8 million.

The penalties amounted to 3.23% of the company's latest audited net assets, which will not have a significant impact on the operation and sustainable development of the company.

The Ministry of Industry and Information Technology Prohibits Tech Giants from Blocking Links to Rival Platforms

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On September 13, 2021, at a press conference held by the State Council Information Office, Ministry of Industry and Information Technology (MIIT) spokesperson Zhao Zhiguo said that MIIT, in accordance with the relevant decisions and plans of the Party Central Committee and the State Council, had embarked on a six-month special rectification action on the internet industry, which started in July. It mainly focused on issues in four areas, including the disruption of market order, the infringement of user rights and interests, threats to data security, and violations of resource and qualification management regulations.

During the industry review, the ministry discovered that one of the major complaints from users was related to tech giants blocking one another's links on their sites, a highly common and long-standing practice among some of China's largest internet companies. At the press conference, Mr. Zhao

stressed that protecting access to legitimate links is a basic requirement for the development of the Internet, and that MIIT has worked to help enterprises understand that interconnection is essential for the high-quality development of the Internet industry and to enable users to surf the Internet smoothly and safely. Thus, restrictions on the identification, resolution, and normal access to links without proper reasons seriously harms the rights and interests of users, and further disrupts the market order.

All platforms will be required to unblock external links to rival sites, and MIIT will guide the relevant Internet enterprises to carry out rectification.

Companies participating in the conference included Alibaba, Tencent, Byte Dance, Baidu, Huawei, Xiaomi, and others. After the conference, Tencent said in response that they firmly supported MIIT's decision and would take action to unblock the links in question.

SAMR Imposes Administrative Penalties on Three Car Chip Distributors

[Read the Chinese version here](#)

On September 7, 2021, the State Administration of Market Regulation (SAMR) imposed administrative penalties against three car chip distribution enterprises – Shanghai Cheter Electronic Co., Ltd. (Cheter), Shanghai Chengsheng Industrial Co., Ltd. (Chengsheng), and Shenzhen Yuchang Technology Co., Ltd. (Yuchang) – for price gouging.

Factors related to COVID-19 have caused an imbalance between the supply and demand of automotive chips, which has made the supply of chips tight since 2020. SAMR determined that these three distribution companies took advantage of the imbalance between supply and demand of car chips in China, and sold chips at a substantial markup when the purchase price was basically stable.

The downstream auto parts enterprises were forced to accept the high price because they had no chips available and faced the risk of paying liquidated damages due to supply shortages. The significant price increase not only failed to increase the supply of products to ease the gaps between supply and demand, but also led to panic hoarding by parts manufacturers and car companies, driving up market prices and disrupting the market order.

Cheter sold NXP automotive chips at a relatively large markup without a significant increase in the cost of purchase, which constituted an act of price gouging and violated the Price Law, resulting in a fine of RMB 500,000. Chengsheng set a markup of 770.59%, and Yuchang set a markup of up to 1,169%. They were both fined RMB 1 million.

Jiangxi AMR Fines Fengcheng Ready-Mixed Concrete Association and Its Eight Member Companies for Monopoly

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On August 18, 2021, SAMR issued a notice that the Jiangxi Administration for Market Regulation (Jiangxi AMR) fined Fengcheng Ready-Mixed Concrete Association (FRMCA) and its member companies a total of about RMB 286 million for their monopoly agreement, which is the highest anti-monopoly fine ever administered in the building materials industry.

Jiangxi AMR launched an investigation into the suspected monopoly agreement between FRMCA and its eight member companies in January 2020, and identified the following illegal acts:

- 1. Jointly fixing and raising the price of concrete.** The ready-mixed concrete production companies involved in the case jointly fixed and increased the price of concrete several times.
- 2. Restricting the production quantity of concrete.** On July 17, 2012, the companies involved reached an agreement to limit the production quantity of commodity concrete, allocate monthly production quantity, and even out the sales and profits across companies.
- 3. Splitting the sales market and raw material procurement market.** FRMCA set up a unified sales and procurement center to divide the sales market among the companies involved and unify their procurement channels of raw materials.
- 4. Jointly excluding transactions.** The involved companies agreed that construction enterprises in the relevant urban areas of Fengcheng could only be supplied with ready-mixed concrete by the designated company.

Jiangxi AMR held that these acts have destroyed the normal competition mechanism of the ready-mixed concrete market in Fengcheng. Along with being fined, FRMCA and the member companies were ordered to stop their illegal activities, and their illegal income was confiscated.

Industry Updates

CATL Awarded RMB 23 Million in Patent Infringement Case against Tafel

[Read the Chinese version here](#)

On August 24, 2021, the High People's Court of Fujian Province handed down its first-instance judgment in the intellectual property dispute between battery manufacturers Contemporary Amperex Technology Co., Limited (CATL) and Jiangsu Tafel New Energy Technology Co., Ltd and its wholly-owned subsidiary Dongguan New Energy Technology Co., Ltd. (Tafel). The other defendant, Wanguo Automobile Trading Company (Wanguo), was alleged to have sold cars with infringing products manufactured by Tafel.

The plaintiff, CATL, claimed that its granted patent for an “explosion-proof device” – a valve created to address the large amounts of gas generated and discharged during the charging of lithium batteries – was used by Tafel without permission to manufacture and sell batteries, which constituted patent infringement. Tafel argued that CATL had modified the claims in the invalidation procedure of the patent, which meant that the patent was currently in a state of partial invalidity, and requested to suspend the trial of the case.

The court held that the patent was currently in a valid state, and that the infringing products manufactured and sold by Tafel without permission infringed CATL's patent rights. Tafel was required to compensate CATL for an economic loss of RMB 23 million, and Wanguo was ordered to stop sales of electric cars with infringing products.

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