

# China Competition Policy & IP

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# Meetings/Seminars/Projects

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## Li Keqiang Highlights Priority Areas for Promoting International Trade in Keynote Speech at the 130<sup>th</sup> China Import and Export Fair

[Read the Chinese version here](#)

On October 14, 2021, the opening ceremony of the 130<sup>th</sup> China Import and Export Fair (also known as the Canton Fair) and the Pearl River International Trade Forum was held in Guangzhou. Chinese Premier Li Keqiang delivered the keynote speech, where he stressed the importance of anti-monopoly enforcement and fair competition and highlighted three priority areas that will be key to promoting the stability and long-term development of China's international trade economy:

1. **Creating a market-oriented, legalized, and international business environment for foreign investment.** China has abundant human resources and a complete industrial support system, which will create a large amount of investment demand. The government will continue to strengthen anti-monopoly and anti-unfair competition enforcement in accordance with the law, crack down on infringements of intellectual property rights, and create a market environment in which domestic and foreign enterprises are treated equally and compete fairly.
2. **Deepening foreign trade and economic cooperation based on industrial and market advantages.** China is both a major exporter and importer and therefore is an important part of the global industrial chain. China will continue to make efforts to maintain the continuity and stability of foreign trade policies, strengthen international cooperation in trade digitization, and guarantee successful global trades.
3. **Participating in improving international economic and trade rules and promoting liberalization and facilitation of trade and investment.** 2021 is the 20<sup>th</sup> anniversary of China joining the World Trade Organization (WTO) and, since then, the country has effectively fulfilled its accession commitments and reduced overall tariffs to 7.4%. China will negotiate and sign more high-standard free trade agreements, strengthen cooperation in emerging areas such as digital and green governance, and encourage the role of free trade ports in order to open up global trade.

# Regulatory News

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## Henan AMR Imposes Administrative Penalties on Shangqiu Xinxianfeng Medicine for Abuse of Market Dominance

[Read the Chinese version here](#)

In October 2017, the former Henan Administration for Industry and Commerce launched an investigation into Shangqiu Xinxianfeng Medicine Co., Ltd. (Xinxianfeng) for suspected abuse of market dominance. In September 2021, the Henan Administration for Market Regulation (Henan AMR), which the Henan Administration for Industry and Commerce was merged into, issued an administrative penalty decision for the case.

The relevant market in the case is the Chinese phenol active pharmaceutical ingredient (API) sales market. Chongqing Southwest No.2 Pharmaceutical Factory Co., Ltd. was the only enterprise producing and selling phenol APIs in China when, in February 2014, Xinxianfeng became its national general distributor. Xinxianfeng reached a 5-year exclusive sales contract for phenol API with Chongqing Southwest, controlling the market with a market share of 100% from May 2014 to March 2015 and 82.95% from April 2015 to March 2017.

Upon becoming a distributor, Xinxianfeng increased the price of phenol API and forced downstream manufacturers and hospitals to purchase the API products at an excessive price. Prior to January 2014, the average market price of phenol API was RMB 127.47/kg. However, in 2014, the market price sold by Xinxianfeng reached RMB 1,000 to 1,300/kg and, from 2015 to March 2017, the company forced the downstream customers to purchase the API product from its designated suppliers with selling prices ranging from RMB 2,572/kg to RMB 6,072.12/kg. These designated suppliers ordered the API product from Xinxianfeng at a price of RMB 600/kg to RMB 732/kg.

Based on its investigation, Henan AMR found that Xinxianfeng had abused its market dominance, greatly harming the interests of consumers and downstream enterprises. Xinxianfeng's illegal proceeds were confiscated and the company was penalized with a fine of 1% of its 2016 annual sales, amounting to approximately RMB 11 million in total penalties.

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## Hubei AMR Holds Meeting to Caution Cement Industry against Monopolistic Behavior

[Read the Chinese version here](#)

On September 30, 2021, the Hubei Administration for Market Regulation (Hubei AMR) held a meeting with leading companies in Hubei Province's cement industry to caution them against monopolistic behaviors.

Gu Dongcai, the deputy director of the Hubei AMR, attended the meeting and delivered a speech on how to maintain stable prices in the Hubei cement market. Noting that recent sharp increases in prices have caused widespread concern, Mr. Gu stated that cement production companies in Hubei Province should carefully study the relevant laws and regulations and strengthen the awareness of fair competition.

Mr. Gu also said that relevant companies should quickly organize self-examinations in accordance with laws, regulations, and anti-monopoly cases, and promptly identify and rectify any problems. Additionally, it is necessary to establish and improve internal compliance management systems; avoid engaging in illegal activities prohibited by the Anti-Monopoly Law, the Price Law, the Anti-Unfair Competition Law, and other relevant regulations; and jointly contribute to the high-quality development of Hubei.

Hubei AMR will continue to track the competition situation and price changes in the cement market, and will promptly investigate and deal with illegal acts such as price collusion, price gouging, and monopoly agreements that are not in accordance with the law in order to maintain the stability of cement market prices.

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## NDRC Issues Notice on Further Deepening the Market-Oriented Reform of On-Grid Power Tariffs of Coal-Fired Power Generation

[Read the Chinese version here](#)

On October 12, 2021, the National Development and Reform Commission (NDRC) issued the "Notice on Further Deepening the Market-Oriented Reform of On-Grid Power Tariffs of Coal-Fired Power Generation," stressing the importance of a market-determined tariff mechanism and a secure and stable supply of electricity.

The notice provides an overview of reform aspects, including liberalizing the on-grid price of all coal-fired electricity in an orderly manner, extending the price fluctuation range, pushing industrial and commercial users into the market, and stabilizing the electricity prices for households and

agriculture. The notice also includes four specific safeguard measures for the market-oriented reform:

1. **Comprehensively promote the construction of the electricity market.** Authorities should adapt to the need of all industrial and commercial users to enter the electricity market, promote all types of power generation plans, accelerate the cultivation of qualified power sellers, and enrich medium- and long-term trading varieties.
2. **Strengthen the connection with the time-of-use electric price policy.** Local governments should speed up the implementation of time-of-use pricing policies, establish peak pricing mechanisms, and guide users to shift peak electricity consumption and cut peak to fill the valley.
3. **Avoid unreasonable administrative intervention.** Local governments should not set irrational barriers for power users and power generation companies to enter the electricity market, and should not interfere with reasonable fluctuations of the market in order to ensure fair, just, and open market transactions.
4. **Strengthen the supervision of the coal power market.** Local departments should promptly investigate and punish illegal behaviors such as price collusion, price gouging, implementation of monopoly agreements, and abuse of market dominance. Relevant departments should also guide electricity generation companies to fully consider the operating benefits of both upstream and downstream businesses and offer reasonable power tariffs.

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## Public Opinion Solicited for Draft Amendment to the Anti-Monopoly Law

[Read the Chinese version here](#)

On October 23, 2021, the 31<sup>st</sup> Meeting of the Standing Committee of the 13<sup>th</sup> National People's Congress published the Draft Amendment to the Anti-Monopoly Law, soliciting public comments. The draft proposes several major changes to the current Anti-Monopoly Law, which has been in effect since August 1, 2008, and was drafted in response to issues that emerged during the implementation of the law – such as insufficient penalties for monopolistic behaviors – and to reflect more aggressive enforcement policies.

Highlights of the Draft Amendment include:

- 1) **Clarifications on enforcement practices and rules.** The draft stipulates that operators shall not abuse data, algorithms, technology, capital advantages, and/or platform rules to exclude or restrict competition. Likewise, business operators shall not organize other operators to reach monopoly agreements or provide substantial assistance to other operators in reaching monopoly agreements. The draft also states that the anti-monopoly enforcement agency of the

State Council should, in accordance with the law, strengthen reviews of the concentration of undertakings in the fields of people's livelihoods, finance, technology, and media.

- 2) **Influence from international antitrust experience.** The draft proposes the establishment of a "safe harbor" system, which stipulates that, if an operator who has reached a monopoly agreement can prove that its market share in the relevant market is lower than the standard set by authorities, it will not be prohibited in principle.
- 3) **An increase in antitrust penalties.** The draft substantially increases the fines for relevant violations. Additionally, penalty provisions have been expanded to apply to legal representatives, principal person(s) in charge, and individuals who are directly responsible for the monopoly agreement reached by the operator.

# Industry Updates

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## Ronbay Wins First Trial of Lithium Battery Patent Dispute against Umicore

[Read the Chinese version here](#)

On September 30, 2021, the Ningbo Intermediate People's Court of Zhejiang Province ruled in favor of Ningbo Ronbay New Energy Technology Co., Ltd. (Ronbay) in its patent dispute against Umicore. This comes one year after Umicore filed a patent infringement lawsuit against Ronbay, claiming that the company's product "Lithium nickel manganese cobalt oxide S6503" infringed Umicore's patent No. ZL201280008003.9. Umicore asked the court to stop Ronbay from producing relevant products and to compensate its economic losses of approximately RMB 62 million.

Regarding the patent at issue, Zhejiang Intellectual Property Research and Service Center conducted a technical feature identification and issued an opinion that the "Lithium nickel manganese cobalt oxide S6503" product did not have the same technical features as Umicore's patent in suit. Therefore, the court ruled that the patent at issue did not infringe Umicore's patent.

However, there is another unsolved patent dispute – one involving a much larger sum of money – between Ronbay and Umicore. On September 17, 2021, Ronbay announced that Umicore and Umicore Korea Ltd. had sued Ronbay and its wholly-owned subsidiary, Hubei Ronbay Lithium Battery Materials Co., Ltd. (Hubei Ronbay), for infringement of Umicore's patent No. ZL201580030857.0. Umicore requested the court to order Ronbay and Hubei Ronbay to stop producing relevant products and to compensate Umicore for its economic losses of RMB 252 million, which would represent approximately 7.02% of Ronbay's operating income in the first half of 2021. The case will go to trial in January 2022.

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## ByteDance's Unfair Competition Claim against Weibo Dismissed in Second Instance Ruling

[Read the Chinese version here](#)

On October 8, 2021, the High People's Court of Beijing issued the second instance verdict in the unfair competition case between Beijing Weimeng Chuangke Network Technology Co., Ltd. (Weimeng Company) and Beijing ByteDance Technology Co., Ltd. (ByteDance).

ByteDance, operator of content discovery platform Toutiao, appealed the first instance judgement that found that ByteDance engaged in unfair competition practices by copying content originating on micro-blogging site/social media platform Sina Weibo, which is owned by Weimeng.



In 2017, ByteDance sued Weimeng for unfair competition, demanding RMB 100 million in compensation. ByteDance claimed that Sina Weibo had published an agreement prohibiting Toutiao's website robots from crawling the contents on Sina Weibo. Because the contents on Sina Weibo were completely open to the public and all other network robots, ByteDance deemed Sina Weibo's behavior as an unjustifiable, malicious restriction to competition.

In this regard, the first instance court – the Beijing Haidan District Court – held that Sina Weibo's unilateral restriction of ByteDance's crawler violated the principles of fair competition and business ethics recognized by the internet industry, and required ByteDance to compensate Weimeng for economic losses of RMB 20 million and reasonable expenses of RMB 1.157 million.

However, the second instance court reversed the lower court's ruling, determining that the accused behavior is legitimate and did not constitute unfair competition. The higher court cited two main reasons for the reversal:

1. Although the Sina Weibo agreement may have objectively caused discrimination against one or some of the operators, as long as it does not harm the interests of consumers and competition order, the accused behavior should be allowed.
2. The Anti-Unfair Competition Law is not intended to provide protection of rights and interests. When regulating competition in the internet industry, it should not take into consideration too many short-term commercial interests and results. Instead, the law should focus on the legitimacy of the competition means, the soundness of the competition mechanisms, and the fundamental goals of market competition.

The court held that Weimeng was exercising its legitimate right within the scope of companies' operational autonomy and its behavior did not constitute unfair competition, and therefore revoked the judgment of the first instance.

## Learn More

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