

China Competition Policy & IP

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Meetings/Seminars/Projects

2022 Annual Fordham China Competition Forum Held Online

[Read the news here](#)

On June 24, 2022, the Annual Fordham China Competition Forum, hosted by the Competition Law Institute at Fordham University, was successfully held online. It featured two panels of leading experts discussing developments in antitrust and competition policies in China, the US, and the EU. James Keyte, Director of the Fordham Competition Law Institute and Director of Global Development at The Brattle Group, delivered a welcome speech at the conference.

Professor Huang Yong from the University of International Business and Economics attended the forum and moderated the first panel, titled “US vs. China: Understanding the new antitrust leadership in the US; How does it compare with the development in China?” Many notable law partners, competition law scholars, and economists from both China and the US were invited to share their thoughts on subjects including the antitrust enforcement policies of the new US government administration and the Federal Trade Commission (FTC), the antitrust analysis theory adopted by the US Supreme Court, and the development and comparison of standard essential patent (SEP) policies in China and the US. Dr. Vanessa Zhang, Principal and Leader of Brattle’s Asian Antitrust & Competition practice, also delivered a speech about the application of economic analysis in antitrust enforcement in China.

Professor Jianzhong Shi of the Chinese University of Political Science and Law moderated the second panel, “EU vs. China: The changing competition and regulatory landscape in the EU; Does this trend matter in China?” Dr. Adina Claiici, a Principal in Brattle’s Brussels office, joined the panel with other scholars and economists to discuss new developments in antitrust enforcement in the EU and China.

The Annual Fordham China Competition Forum is one of the special conferences of Fordham’s International Antitrust Law and Policy Conference. The conference has invited senior officials from national antitrust enforcement agencies to discuss antitrust policies and trends in different jurisdictions around the world for nearly half a century. It is a widely recognized international event at the forefront of competition law.

SAMR and Eurasian Economic Commission Hold Joint Conference on Antitrust Regulation in the Digital Economy

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On June 2, 2022, the State Administration for Market Regulation (SAMR) published an announcement stating that the three departments of the China Anti-Monopoly Bureau – the Competition Policy Coordination Department and the Anti-Monopoly Law Enforcement Departments I and II – jointly held a video conference with the Department for Antitrust Regulation of the Eurasian Economic Commission (EEC) on April 28, 2022. They discussed issues such as the definition of digital products, relevant product and geographic market definitions, and the calculation of market share in the digital economy.

In recent years, SAMR and EEC have strengthened their cooperation in antitrust regulation. They signed a Memorandum of Understanding on Competition Policy and Antitrust Regulation in November 2021, laying the foundation for promoting cooperation regarding competition policies and anti-monopoly regulation.

Central Commission for Comprehensively Deepening Reform Calls for Data Regulation and Anti-Monopoly of Platforms

[Read the Chinese version here](#)

On June 22, 2022, the 26th meeting of the Central Commission for Comprehensively Deepening Reform was held, with President Xi Jinping presiding. At the meeting, the commission reviewed and adopted several documents, including the following:

- “Opinions on Building a Data Foundation System to Better Play the Role of Data Elements”
- “Opinions on Strengthening and Improving Administrative Divisions”
- “Work Plan on Conducting Pilot Reform of Scientific and Technological Talent Evaluation”
- “Work Plan on Strengthening the Supervision of Large Payment Platform Companies to Promote the Standardized and Healthy Development of Payment and Fintech”

As chair of the meeting, President Xi stressed that the construction of China’s data infrastructure system is a matter of overall national development and security. The authorities should maintain national data security, protect personal information and trade secrets, promote the efficient circulation and use of data, coordinate the promotion of data property rights, and accelerate the construction of the data infrastructure system.

The commission emphasized that platform companies' payments and other financial activities should be regulated in accordance with the law to protect the legitimate rights and interests of financial consumers. The authorities should also strengthen the anti-monopoly and anti-unfair competition supervision of platforms, enhance the supervision of platforms' data gathering, and regulate big data and algorithmic discrimination.

Amendments to China's Anti-Monopoly Law Passed

[Read the Chinese version here](#)

On June 24, 2022, the 35th Session of the Standing Committee of the 13th National People's Congress (NPC) passed amendments to the Anti-Monopoly Law (AML), which will take effect on August 1, 2022. These are the first amendments to the AML since its adoption in 2008.

The AML has the positioning of a fundamental law, and antitrust work is characterized by its professionalism and complexity. In line with this, while leaving room for the formulation of anti-monopoly guidelines and other supporting regulations, the amended law further refines the antitrust regulatory regime in many aspects – such as monopoly agreements and concentrations of undertakings – and further clarifies antitrust rules for the platform economy.

Prominent amendments are summarized as follows:

- **Monopoly agreements.** First, the new AML improves the rules for identifying vertical monopoly agreements. Operators suspected of vertical monopolistic practices shall not be found in breach of antitrust law if they can prove that they do not have the effect of excluding or restricting competition. Second, the new AML introduces the safe harbor mechanism for vertical monopoly agreements, namely for operators with a market share lower than the standard set by the AML enforcement agency and those that satisfy other conditions stipulated by the State Council; those that meet those conditions shall not be subject to the prohibition of the amended law. Third, the new AML introduces a new provision stipulating that operators shall not organize other operators to enter into a monopoly agreement or provide substantial assistance to other operators to enter into a monopoly agreement.
- **Concentrations of undertakings.** First, the new AML refines the investigation and handling procedures for the concentration of undertakings that fails to meet the notification thresholds. Second, the new AML introduces the “stop the clock” system to the review procedure. Third, it is stipulated that the anti-monopoly enforcement agency of the State Council shall improve the classified and graded review system to optimize the allocation of merger review resources and improve review efficiency.

In addition, the new AML also enhances the regulation of the digital economy. The amendment on general provisions explicitly prohibits operators from committing monopolistic acts by exploiting data, algorithms, technologies, capital advantages, and platform rules. The new AML further reiterates in the amendment on abuse of market dominance that an operator with a dominant market position shall not abuse it with data and algorithms, technology, platform rules, etc.

Another noteworthy feature of the new AML is its considerably stepped-up penalties for monopolistic behavior. It raises the fines for violations such as entering into monopoly agreements, unlawfully implementing concentrations of undertakings, and refusing or obstructing antitrust investigations. It also establishes personal liability for entering into monopolistic agreements and provides punitive penalties for exceptionally egregious cases, ranging from two to five times the amount of the intended penalty.

SAMR Issues Six Amended Supporting Regulations of the Anti-Monopoly Law for Public Comments

[Read the Chinese version here](#)

On June 27, 2022, SAMR publicly solicited opinions on amending six supporting regulations of the Anti-Monopoly Law (AML). The amendments complement the newly amended AML, detailing the regulatory regime in many aspects, such as the antitrust rule of law for the platform economy, the “stop the clock” system for merger review, and legal liability. Highlights of each draft amendment to the regulations are summarized below.

The “Regulations of the State Council on the Declaration Standards for the Concentration of Undertakings (Draft for Comments)” raises the threshold for merger notifications as measured by turnover. In addition, the regulations optimize the filing criteria to extend the scope of the review to include concentrations of undertakings with a turnover of more than RMB 100 billion that meet certain conditions. It also puts forward provisions for concentrations that do not reach the filing standard but meet the relevant circumstances of the amended AML.

The “Provisions on the Prohibition of Monopoly Agreements (Draft for Comments)” adds a new definition of “competing operators” to the horizontal monopoly agreement, clarifying that both actual and potential competitors may become the subject of horizontal monopoly agreements. In addition, it proposes new provisions on monopoly agreements through digital economy means, the safe harbor mechanism, and the legal liability of operators who organize and help reach monopoly agreements.

The “Provisions on the Prohibition of Abuse of Market Dominance (Draft for Comments)” clarifies the anti-monopoly system’s rules of application in the field of the platform economy. It introduces two new factors for determining the market dominance of platform operators, namely the amount of transactions and the ability to control traffic. It also adds the forms and justifications of “self-preferential treatment” by platform operators with market dominance, as well as factors to be considered for determining market dominance and abusive behavior, regulating the investigation procedure and adjusting legal liability in line with the new AML.

The “Provisions on the Prohibition of Abuse of Intellectual Property Rights to Exclude and Restrict Competition (Draft for Comments)” adds the provision that an operator shall not use intellectual property rights to organize other operators to reach a monopoly agreement or provide substantial

assistance to other operators to reach a monopoly agreement. It also improves the anti-monopoly rules in key areas such as standard essential patents and copyright collective management organizations.

The “Provisions on Suppressing Abuse of Administrative Power to Exclude and Restrict Competition (Draft for Comments)” has been refined in many aspects. It elaborates on the manifestations of exclusion and restriction of competition – such as limiting transactions and impeding the free flow of goods – as well as new enforcement requirements, including the relevant units that or individuals who should cooperate with the investigation.

The “Provisions on the Review of Concentration of Undertakings (Draft for Comments)” clarifies the application of the “stop the clock” mechanism, refines the provisions for the review of concentrations not meeting the filing threshold and the investigation of illegal concentrations, improves the classification and grading review system of concentrations of undertakings, and heightens the legal liability of filing parties.

SAMR Releases Annual Report on China’s Antitrust Enforcement (2021)

[Read the Chinese version here](#)

On June 8, 2022, SAMR released the Annual Report on China’s Antitrust Enforcement (2021). The report highlights China’s major enforcement achievements in 2021, showcasing steady improvements in the order of fair competition in the market, the important results achieved in antitrust work, and the prevention of disorderly capital expansion. It also guides the future direction of antitrust regulation.

In 2021, authorities in China focused on building a firm foundation for fair competition under the rule of law that meets the requirements of high-quality development. Likewise, authorities worked to create a stable, fair, transparent, and predictable market competition environment, meet the needs of people’s livelihoods in the new era, and deepen international openness and cooperation in the competition field. China’s antitrust achievements in 2021 were fruitful, including the advancement of amendments to the Anti-Monopoly Law, the official launch of the National Anti-Monopoly Bureau, and the resolution of new competition issues on platforms, such as “either-or” acts and exclusive rights in online music.

Regarding enforcement achievements, 175 monopolization cases were investigated and handled, an increase of 61.5% from 2020, with fines totaling RMB 23.592 billion. This included: 11 monopoly agreement cases, with fines of RMB 1.673 billion; 11 cases of abuse of market dominance, with fines of RMB 21.847 billion; 107 cases of illegal implementation of concentrations, with fines of RMB 72.35 million; and 46 cases of abuse of administrative power to exclude or restrict competition. SAMR concluded 727 cases of concentrations of undertakings in 2021, an increase of 53% from

2020, of which one was prohibited, four were approved with remedies, and two were withdrawn by the filers due to their inability to address SAMR's competition concerns.

Further details from the report on the different antitrust cases include:

- **Monopoly agreements:** Of the 11 monopoly agreement cases concluded in 2021, nine were horizontal monopoly agreement cases – of which one involved price fixing and eight involved both price fixing and market division – and two were vertical monopoly agreement cases, both of which involved resale price maintenance. Industries such as pharmaceuticals, building materials, gas, and household appliances came under enforcement agencies' focus.
- **Abuse of market dominance:** Of the 11 concluded cases of abuse of dominant market position, seven occurred in areas of people's livelihoods – such as pharmaceuticals, water, and gas supply – while three were in the platform economy and one was in the energy sector. By cause of action, three involved unfairly high prices, one involved refusal to deal, three involved exclusive dealings, and four involved impositions of unreasonable trade conditions.
- **Concentrations of undertakings:** In 2021, SAMR concluded 341 cases of horizontal mergers, 116 cases of vertical mergers, and 270 cases of conglomerate mergers. Overall, horizontal mergers took up the highest proportion (47% of concentrations of undertakings cases), and equity acquisition remained the main transaction mode.

In summary, antitrust efforts in 2021 included the following five features:

1. **China resolutely investigated and dealt with “either-or” practices in the platform economy.** SAMR investigated and punished Alibaba and Meituan for their “either-or” acts, fining them RMB 18.228 billion and RMB 3.442 billion, respectively. SAMR also urged platform companies to discipline their operations consciously and proactively.
2. **China strictly regulated concentrations involving platform enterprises.** There were 40 filed concentrations of platform operators that were strictly reviewed in 2021. In the live game broadcasting industry, SAMR banned the Huya and Douyu merger, making it the first prohibited case in China's platform economy. The banned merger represents an important model for preventing platform monopolies and disorderly capital expansion.
3. **The obligation of platform companies to notify their concentrations was subject to stronger regulation.** SAMR investigated nearly 200 gun-jumping cases throughout the year, 98 of which were publicly punished. In 2021, SAMR also ordered Tencent to lift the exclusive online music copyrights in the case of Tencent's acquisition of equity interest in China Music Group, which was the first case in China in which necessary measures were taken to restore the state of competition in the market in gun-jumping cases.
4. **China emphasized reinforcing antitrust enforcement in the fields of medicine, building materials, public utilities, and other areas of people's livelihoods.**

5. Law enforcement agencies strictly regulated the abuse of administrative power to exclude and restrict competition. Forty-six cases were investigated and dealt with.

Regarding antitrust enforcement in 2022, the report emphasizes that authorities should pay close attention to the competition dynamics in the fields of the platform economy, high tech, and intellectual property, and the competitive behavior of platform enterprises in key fields such as people's livelihoods, finance, technology, and media. Authorities should also strictly review merger cases in industries such as semiconductors and high-end equipment manufacturing in accordance with the law to provide a strong guarantee for their high-quality development.

II-VI's Acquisition of Coherent Conditionally Approved by SAMR

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On June 28, 2022, SAMR issued the decision to approve the acquisition of equity interests of Coherent Company by II-VI Incorporated with restrictive conditions. The acquirer, II-VI, provides engineered materials and optoelectronic components to users worldwide in the communications, semiconductor equipment, consumer electronics, and life sciences industries. Coherent is a supplier of laser equipment. On March 25, 2021, the two parties signed an agreement for II-VI to acquire 100% of Coherent's equity through a cash and stock merger.

The transaction mainly involves the laser equipment industry. SAMR found that there is horizontal overlap between the concentrated parties in seven relevant product markets – including laser gain and nonlinear optical crystals, laser diodes, and beam transmission components – and 22 vertical relationships in 16 relevant product markets, including high-power CO₂ laser optics (upstream), high-power CO₂ lasers (downstream), and low-power CO₂ laser optics (upstream). The relevant geographic market in this case is defined as the global market, while focusing on the situation in the Chinese market.

After a comprehensive review, SAMR found that the post-concentration entity has the ability and incentive to exclude and restrict competition in the upstream glass-based laser optics market for excimer lasers, the downstream low-power CO₂ laser market, and the downstream high-power CO₂ laser market. In the upstream high-power CO₂ laser optics market and low-power CO₂ laser optics market, II-VI's global market shares are 75–80% and 60–65%, respectively, and the Chinese market shares are 85–90% and 35–40%, respectively. Meanwhile, Coherent's shares in the global and Chinese markets in the downstream excimer laser market are 90–95% and 95–100%, respectively. Therefore, the merged entity will have a dominant market position to control the glass-based laser optics market. With the further strengthening of upstream and downstream product coordination, it may exclude and restrict the market competition.

Based on the above market conditions, SAMR decided to approve the concentration with additional restrictive conditions. The merged entity should continue to execute existing procurement contracts

and their commercial terms. It is also required to continue to supply CO2 laser optics to customers following the principles of fairness, reasonableness, and non-discrimination to ensure the price, quality, quantity, and other terms will not be lower than the average for the 12 months prior to the effective date of the remedy plan.

Further, the merged entity is also required to continue to follow the principle of multi-source supply for the procurement of glass-based laser optics for excimer lasers, to continue to procure the devices based on the principle of non-discrimination, and not set conditions in the relevant procurement in favor of its own glass-based laser optics business. It should also take protective measures regarding competitively sensitive information of third-party manufacturers.

Yunnan AMR Fines Six Seal Companies for Monopoly Agreements

[Read the Chinese version here](#)

On June 30, 2022, SAMR published the decision on the administrative penalties imposed by the Yunnan Administration of Market Regulation (Yunnan AMR) on six anti-counterfeit seal companies for their reaching and implementing of monopoly agreements. The six companies are the Honghe branch of Yunnan Chuangxin Anti-counterfeiting Seal Co., Ltd., Honghe Shundashun Anti-counterfeiting Seal Co., Ltd., Honghe Chengxi Anti-counterfeiting Seal Co., Ltd., Honghe Hongwei Anti-counterfeiting Seal Co., Ltd., Mengzi Shichang Anti-counterfeiting Seal Co., Ltd., and Honghe Zhongling Anti-counterfeiting Seal Co., Ltd.

On March 5, 2019, Yunnan Chuangxin, Honghe Hongwei, and Honghe Shundashun signed an agreement to unify the engraving price of anti-counterfeit seals at RMB 270 per copper chip seal, RMB 260 per photosensitive chip seal, and RMB 280 per imported ink-return chip seal. On October 30, 2019, due to complaints that the prices were too high, they adjusted the price to RMB 220 per copper chip seal, RMB 210 per photosensitive chip seal, and RMB 250 per imported ink-return chip seal. On November 29, 2019, all six of the involved companies signed an agreement to unify the prices to RMB 220 per copper chip seal, RMB 210 per photosensitive chip seal, and RMB 230 per imported ink-return chip seal. Up until the time of Yunnan AMR's investigation, all six companies had been charging according to this standard.

Yunnan AMR determined that the six companies had entered into a fixed-price monopoly agreement in violation of Article 13 of the Anti-Monopoly Law. In December 2021, the regulatory authority confiscated their illegal proceeds and fined the three leading companies 3% of their turnover in the 2018 fiscal year, which amounts to a total of about RMB 360,000.

Jilin AMR Fines 11 Motor Vehicle Testing Companies for Price Fixing

[Read the Chinese version here](#)

On June 30, 2022, SAMR published the decisions on the administrative penalties imposed by the Jilin Administration of Market Regulation (Jilin AMR) on 11 motor vehicle testing companies in Liaoyuan City for a monopoly agreement. Jilin AMR opened the investigation into the alleged monopoly agreement in September 2020 and made the administrative penalty decision on the case following the law in June 2022.

Before June 2016, the government-guided price of motor vehicle testing in Liaoyuan City was RMB 160 per unit. However, due to the fierce competition in the market, the actual testing price came to RMB 50–100 per unit. To increase prices, Liaoyuan Dongsheng Automobile Testing Co., Ltd., Liaoyuan Xuri Automobile Testing Co., Ltd., Dongliao Dongsheng Automobile Testing Co., Ltd., and Liaoyuan Tongan Automobile Testing Co., Ltd. – which are all controlled by the same person – negotiated and reached a monopoly agreement with seven competitors to fix the prices. These competitors are Liaoyuan Kuitong Motor Vehicle Testing Co., Ltd., Liaoyuan Tongli Motor Vehicle Testing Co., Ltd., Liaoyuan Kaida Automobile Testing Co., Ltd., Liaoyuan City Longshan District Limin Motor Vehicle Safety Performance Testing Co., Ltd., Dongliao Yunan Vehicle Testing Co., Ltd., Liaoyuan Xiyuan Motor Vehicle Inspection Co., Ltd., and Liaoyuan Tongda Motor Vehicle Testing Co., Ltd.

In June 2016, these companies agreed to standardize the testing price at RMB 160 per unit and allocate operating income uniformly based on the number of testing devices they each have and other factors. In November 2017, operators were allowed to determine their motor vehicle inspection prices. Therefore, the companies entered into a new agreement to raise the testing price to RMB 260 per unit on November 20, 2017, and then lowered the price back to RMB 160 per unit after a consumer complaint.

Jilin AMR ruled that the four companies and their seven competitors had reached and implemented agreements to fix the price of motor vehicle testing services, which excluded and restricted competition in the relevant market and harmed fair market competition and consumer interests. Accordingly, Jilin AMR imposed fines of 3% of their sales for the 2019 financial year on the four leading companies and 2% of their sales for the 2019 financial year on the remaining seven companies, which amounts to a total of RMB 215,972.

Guizhou AMR Fines Eight LPG Enterprises for Monopoly Agreement

[Read the Chinese version here](#)

On June 20, 2022, SAMR published the decision on the administrative penalty imposed by the Guizhou Administration for Market Regulation (Guizhou AMR) on eight liquefied petroleum gas (LPG) operating enterprises for allegedly reaching and implementing monopoly agreements that fixed prices and divided the market. Guizhou AMR filed an investigation into the conduct in November 2021 and decided to impose penalties in June 2022.

Upon investigation, the eight enterprises involved in the case all operated bottled LPG sales in the central city of Zunyi. They first entered into cooperation and signed an agreement in January 2014, which included dividing the sales market as well as fixing a uniform retail price, with a special coordination group established to oversee the implementation of the agreement by each participating company. There has been a consistent practice of price coordination among the eight companies, with retail price changes remaining aligned across all companies in recent years. Guizhou AMR found that such conduct violated Article 13 of China's Anti-Monopoly Law.

Given that the eight enterprises actively cooperated in the investigation process and complied with the circumstances in the relevant regulations that allowed for leniency in punishment, Guizhou AMR imposed a fine of 2% of the annual sales of all eight enterprises in 2020, totaling RMB 1,427,993.75. As the financial data of the parties involved was incomplete, it was not possible to calculate their income and expenses from the monopoly agreement, and no illegal income was confiscated in this case.

Two Water Supply Companies Fined for Abuse of Dominance by Zhejiang AMR

[Read the Chinese version here](#)

[Read the Chinese version here](#)

On June 10, 2022, SAMR published the decision on the administrative penalty imposed by the Zhejiang Administration for Market Regulation (Zhejiang AMR) on Shaoxing Keqiao Water Supply Company (Keqiao) for the abuse of its market dominance. Zhejiang AMR filed an investigation into the alleged conduct in August 2021 and handed down an administrative penalty decision on June 2, 2022.

The relevant product market in this case is the urban public tap water supply service market, and the relevant geographic market is the Keqiao District, Shaoxing City (excluding Ma'an Street), in which Keqiao had a 100% market share. Keqiao forced real estate development enterprises to entrust the

construction of the relevant water supply projects to Keqiao, restricted the brands and suppliers of secondary water supply facilities, equipment, and components, and attached unreasonable trade conditions of extra charges. Such conduct had excluded and restricted other legitimate operators from competing in the water supply construction market, thereby restricting the choice of counterparties, which undermined their legitimate rights and interests in the transaction. Zhejiang AMR found it constituting the abuse of market dominance and in violation of China’s antitrust law.

Zhejiang AMR ordered Keqiao to stop the illegal act and decided to confiscate the illegal proceeds of RMB 12,553,416, as well as fine 3% of its sales in 2020, namely RMB 9.9115 million.

On June 9, 2022, SAMR also published a similar administrative penalty imposed by Zhejiang AMR on Shaoxing Shangyu Water Group Company (Shangyu) for its abuse of market dominance.

In this case, Shangyu required real estate development companies to entrust the construction of relevant water supply projects only to their designated construction companies, and attached unreasonable trading conditions with additional charges in the relevant market of urban public tap water supply service market in Shangyu District, Shaoxing City.

Zhejiang AMR filed an investigation into the alleged conduct in August 2021 and handed down an administrative penalty decision on June 2, 2022. Zhejiang AMR ordered Shangyu to stop its illegal acts and decided to confiscate its illegal proceeds of RMB 3,565,555.5, as well as impose a fine of 3% of its sales in 2020, which amounted to RMB 7,391,353.56.

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