

# China Competition Policy & IP

MONTHLY UPDATE

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# Meetings/Seminars/Projects

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## Seminar on Fair Competition for the Healthy and Sustainable Development of Platform Economy Held in Beijing

[Read the Chinese version here](#)

On September 6, 2022, the Fair Competition for the Healthy and Sustainable Development of Platform Economy seminar was hosted by China Market Regulation News in Beijing. Representatives from the State Administration for Market Regulation (SAMR), universities, research institutes, law firms, and enterprises focused on the revision of the new Anti-Monopoly Law and participated in in-depth discussions on topics such as improving platform economic governance rules, regulating the healthy development of platform enterprises, and enhancing the resilience of small and medium-sized enterprises.

Chen Libo, a representative of the Competition Policy Coordination Department of SAMR, presented the achievements of China's market regulators in competition policy and antitrust work in recent years. He stated that SAMR has adhered to the principles of marketization and the rule of law, strengthened the basic position of competition policy, promoted the revision of the Anti-Monopoly Law and supporting regulations, and issued the Anti-Monopoly Guidelines for the Platform Economy and Guidelines on Overseas Anti-monopoly Compliance for Enterprises. Such efforts have laid the foundation of the rule of law for creating a fair, transparent, and predictable market environment and ensuring that all types of market players compete fairly in the national market.

From January to May 2022, market regulators in China reviewed 76,300 newly-issued policy documents and 175,900 existing documents, with more than 5,400 repealed and revised. In the first half of 2022, market regulators concluded 25 cases of abuse of administrative power that exclude or restrict competition. SAMR will continue to promote a fair competition policy, revise and issue detailed rules for implementing the fair competition review system, and conduct a third-party assessment of the system. The market regulator will also solidly carry out special actions to stop the abuse of administrative power that excludes and restricts competition.

Other representatives of regulatory authorities also spoke on regulation in the platform and digital economy. Expert representatives from the Development Research Center, SAMR's Competition Policy and Big Data Center, the University of International Business and Economics, the Chinese Academy of Fiscal Sciences, and the China Academy of Information and Communications Technology made suggestions on improving the platform economy governance rules, and on platforms boosting the development of small and medium-sized enterprises.

Focusing on enhancing the resilience of small and medium-sized enterprises, representatives from Tencent, Meituan, Pinduoduo, and other enterprises shared the practice of building a smart marketing cloud platform for small and medium-sized enterprises and digitally empowering supply chains.

## SASAC Issues New Rules Focused on Preventing Monopoly Risks

[Read the Chinese version here](#)

On September 16, 2022, the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) issued the “Measures for Compliance Management of Central Enterprises” to promote qualifying enterprises to strengthen compliance management, effectively prevent and control risks, and vigorously safeguard and deepen reform and high-quality development. The measures went into effect on October 1, 2022.

It is clearly stated in the measures that central enterprises shall establish a chief compliance officer – who shall be appointed by the general counsel – to lead the compliance management department in organizing and carrying out relevant work and to guide its units to strengthen compliance management. The measures also require enterprises to strengthen compliance risk prevention in key areas and formulate special management guidelines, among which anti-monopoly compliance is paramount.

The stricter requirements for compliance set out in the measures are in response to the current context of international competition, where central enterprises are facing an increasingly complex and challenging domestic and international environment. Thus, the measures emphasize that central enterprises should embed compliance review as a mandatory procedure in the operation and management process; the chief compliance officer should sign compliance review opinions on major decision-making matters. Business, functional, and compliance management departments shall improve the review’s criteria, process, and focus per their responsibilities and authority and conduct regular follow-up assessments.

If a central enterprise has a major legal dispute case, a major administrative penalty, a criminal case, or a major compliance risk event – such as being sanctioned by an international organization due to non-compliance – that causes or may cause a significant loss of assets or a severe adverse impact on the enterprise, the chief compliance officer shall take the lead. Compliance management should handle coordination, and relevant departments must work together to respond in an appropriate and timely manner.

In terms of system construction, the measures place anti-monopoly at the top of the list of key areas for strengthening compliance management. Article 18 of the measures propose that central enterprises develop specific systems or special guidelines for compliance management in key areas such as anti-monopoly, anti-bribery, ecological protection, production safety, labor and employment, tax management, data protection, and businesses with high compliance risks.

As indicated by Sun Jin, Professor at Wuhan University Law School, antitrust compliance plays an important role for central enterprises. The central government has placed great emphasis on strengthening the fundamental position of competition policy and repeatedly highlighted the maintenance of fair competition in the market in recent years. Given their large market size and often monopolistic position, central enterprises face greater pressure in competition compliance. Therefore, these enterprises must prioritize anti-monopoly compliance.

In this regard, and in addition to issuing the management measures, SASAC also requires all central enterprises to conduct at least one training session on the new Anti-Monopoly Law by the end of 2022. Up until now, many central enterprises – such as China Nonferrous Metal Mining (Group) Co., Ltd. and the China National Salt Industry Corporation – have carried out special study and training activities to integrate anti-monopoly compliance with production and operation and promote the implementation of the new law’s relevant provisions.

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## Hunan AMR Fines Five Driving Schools for Monopoly Agreement

[Read the Chinese version here](#)

In September 2022, SAMR published the administrative penalties decision imposed by the Hunan Administration for Market Regulation (Hunan AMR) on five driving schools in Xintian County for reaching and implementing a monopoly agreement. The Hunan AMR started investigating the alleged monopoly agreement in June 2019 and made the administrative penalties decision in July 2022.

Prior to November 17, 2018, the five driving schools involved in the case – including Longquan Vehicle Driver Training School, Remote Vehicle Driver Training School, Minxing Vehicle Driver Training School, Xinhe Vehicle Driver Training School, and Sunshine Vehicle Driver Training School – were separately engaged in vehicle driver training operations in Xintian County with independent pricing. On November 17, 2018, the five driving schools reached a consensus on registration fees in a meeting at the Xintian County Driver Training Center. On November 18, 2018, the five driving schools set up a unified “Driver Training Center Registration Office” and collected registration fees at RMB 4,980 per person. In June 2019, the five driving schools stopped implementing the fixed price agreement due to the Hunan AMR’s investigation.

Hunan AMR ruled that the five companies had reached and implemented agreements to fix the price of driver training services, which excluded and restricted competition in the Xintian County vehicle driver training market and harmed consumer interests. Accordingly, Hunan AMR fined each school 3.5% of its sales in the 2018 fiscal year, amounting to a total of RMB 320,000.

# Industry Updates

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## SAMR Conditionally Approves JV Deal Between SAG and EAL

[Read the Chinese version here](#)

On September 13, 2022, SAMR conditionally approved a joint venture (JV) between two state-owned airport operators, Shanghai Airport Group (SAG) and China Eastern Airlines Logistics (EAL). It is the first conditionally approved case that only involves state-owned enterprises in China.

SAG, established in 1997, is engaged in the management of Shanghai Pudong and Hongqiao international airports, including airport construction, operation and management, and ground services related to domestic and international air transportation. EAL, established in 2004, mainly engages in air transportation, integrated ground services, and comprehensive logistics solutions. The two operators declared a new JV for smart airport cargo terminal services at Shanghai Pudong Airport. SAG and EAL will jointly control the JV, holding 51% and 49% of the equity, respectively.

SAMR defines the airport cargo terminal service market, international air cargo services, and domestic air cargo services as the relevant product markets. The JV, SAG, and EAL overlap horizontally in the airport cargo terminal service market. Meanwhile, EAL is engaged in air cargo services, which have a vertical relationship with airport cargo terminal services. Regarding the relevant geographic market, SAMR defines all international/domestic routes with Shanghai Pudong Airport as the origin or destination.

SAMR conducted an in-depth analysis of the effects of this concentration of undertakings on market competition. SAMR's review found that the concentrated entity will possess over 70% of the market for cargo terminal services at Shanghai Pudong Airport, rendering it dominant. This concentration may have the effect of eliminating or restricting competition in the relevant markets. Additionally, the concentrated entity may utilize its market power to reduce service quality and increase service prices.

To mitigate the competition concerns, SAMR decided to impose the following behavioral restrictions:

1. SAG and EAL shall maintain their mutual independence in the cargo terminal business at Pudong Airport. They shall neither share competitively sensitive information nor enter into any agreement prohibited by antitrust law.
2. SAG, EAL, and the JV should operate independently and continue to compete.

3. SAG, EAL, and LV cannot exchange competitively sensitive information directly or indirectly with each other. The JV needs to operate independently.
4. For the next five years, SAG and EAL shall continue to fulfill service contracts already signed with relevant customers and shall not refuse to renew existing contracts on the same or better terms as before the establishment of the JV.
5. SAG, EAL, and the JV shall provide airport cargo terminal services at Pudong Airport on fair, reasonable, and non-discriminatory terms. Also, apart from appointing the monitors, the JV has committed to inviting the China Air Transport Association to monitor and guide its compliance with the remedy commitments.

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## SPC Affirms China's Jurisdiction over SEP Global FRAND Rate in *OPPO v. Nokia*

### [Read the Chinese version here](#)

On September 7, 2022, the Intellectual Property Court of the Supreme People's Court (SPC) handed down the final judgment on the jurisdiction of *OPPO v. Nokia*, dismissing Nokia's appeal and affirming the right for Chinese courts to set global FRAND licensing rates for a standard essential patent (SEP).

On July 13, 2021, OPPO filed a lawsuit with Chongqing First Intermediate People's Court seeking the court's determination of the global FRAND licensing terms for Nokia's SEP. At the end of 2021, Chongqing First Intermediate People's Court ruled in the first instance on the jurisdictional objection brought by Nokia, confirming the jurisdiction of Chinese courts over the global licensing fee dispute involving the 5G SEP. Nokia then appealed to the SPC, arguing that the Chinese court did not have jurisdiction over the case. In its second-instance judgment, the SPC Intellectual Property Court held that China is the primary location for negotiating, granting, and implementing the SEP license.

Given China's extremely close geographical connection with the dispute, Chinese courts had indisputable jurisdiction over the case. In particular, the Chongqing First Intermediate People's Court has the appropriate connection to the dispute as the court in the location where the SEP was primarily implemented. The Chongqing First Intermediate People's Court thus has jurisdiction over this dispute and appropriately made a judgment on the global licensing conditions of the SEP involved.

In the *OPPO v. Nokia* case, the SPC again confirmed the jurisdiction of Chinese courts over SEP global licensing fee disputes. This is also the first time China's highest judicial authority has taken a position in a 5G global licensing dispute.

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# First Domestic Antitrust Lawsuit Involving Public Data Accepted by the Intellectual Property Court

[Read the Chinese version here](#)

Shanghai Yuhan Automotive Technology Co. (Yuhan), a company engaged in the used car trade, filed a lawsuit against Beijing Yuchexing Information Technology Co., Ltd (Yuchexing), the operator of the used car information service platform “Lemon Check.” Yuhan alleged that Yuchexing abused its dominant position in the online search services market for insurance data of domestic used cars by implementing unfairly high prices and differential treatment. On August 5, 2022, the Beijing Intellectual Property Court formally accepted the case, making it the first domestic anti-monopoly case involving the field of public data. Yuchexing received the court’s letter on September 9, 2022, and stated that it would respond positively to the lawsuit.

Lemon Check officially launched on November 18, 2020. It provides information on whether a used car has been insured during the insurance period and the exact status of the insurance, as well as the status of used car repairs for China Automobile Dealers Association (CADA) member companies, which include new and used car dealers and 4S shops (shops that offer sales of cars and accessories as well as repairs and information services). Lemon Check charges RMB 32 per search for non-CADA members and RMB 28 per search for members.

According to the complaint, Lemon Check was built under the leadership of CADA, which has access to the public data of the national auto insurance information platform – covering the motor vehicle insurance data of 68 auto insurance companies nationwide – and has a natural advantage in terms of volume and quality of data, making it difficult for other operators to compete in the market for online search services for insurance data of domestic used cars. The plaintiff, therefore, argued that Lemon Check possessed a dominant market position, which it utilized to impose differential treatment on members and non-members of CADA and charge unfairly high prices for auto insurance data search services.

The plaintiff requested the court to order the defendant to immediately cease its conduct of abusing the dominant market position. The plaintiff also sought compensation for economic loss and reasonable costs in the amount of RMB 500,000.

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# SPC Rejects Appeal of Horizontal Monopoly Dispute Between Township Kindergartens

[Read the Chinese version here](#)

On September 8, 2022, the SPC released the second-instance judgment for the dispute over a horizontal monopoly agreement between two Jinxian County kindergartens, Art Kindergarten and Liujiayi Kindergarten. The SPC upheld the original ruling of the court of the first instance.

In July 2017, five kindergartens in Jinxian County – Art Kindergarten, Liujiayi Kindergarten, Aile Kindergarten, Jinbeibei Kindergarten, and Talent Kindergarten – signed a joint agreement for the parties to pay tuition fees, meals, and school expenses for enrolled students within the first month of each semester. The net profit was intended to be used as the basis for all five parties to share dividends. On August 20, 2018, they jointly agreed on the fees to be charged by each kindergarten for the fall of 2018.

In 2018, Art Kindergarten sued Liujiayi Kindergarten and its director, Wan Zhen, for non-compliance with the agreement and claimed damages for breach of contract. On July 26, 2021, the Intermediate People’s Court of Nanchang City of Jiangxi Province handed down its first-instance judgment, holding that the agreement involved in this case had divided the kindergarten market in Wenzhen Town, Jinxian County, and Jiangxi Province, and restricted the number of students and the pricing of tuition fees, which excluded and restricted competition. The agreement involved in the case was found to be invalid as it violated the Anti-Monopoly Law. Art Kindergarten’s claim for liquidated damages and financial compensation was, in essence, a demand for a division of the monopoly benefits. As a participant in the illegal act, Art Kindergarten should not be entitled to relief even if it suffered losses. Therefore, the court of the first instance dismissed Art Kindergarten’s claim.

On June 22, 2022, the SPC delivered a second-instance judgment, which confirmed that the agreement in question should be deemed invalid by law as it constituted a monopoly agreement. Therefore, the agreement was not binding on the parties, and Art Kindergarten was not entitled to claim benefits under the agreement in question.

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## SPC Dismisses Abuse of Dominance Lawsuit Against China Mobile Henan

[Read the Chinese version here](#)

On June 23, 2022, the SPC handed down the second-instance judgment in the case between a consumer, Ma Lijie, and the China Mobile Communications Group Henan Co., Ltd (China Mobile Henan) for abuse of dominance, rejecting Mr. Ma’s appeal and upholding the original verdict.

The plaintiff, Mr. Ma, sued China Mobile Henan for not allowing him to switch to a different mobile service operator, alleging that China Mobile Henan abused its dominant position by conducting exclusive dealing and discriminatory treatments. The plaintiff thus requested the court to rule that China Mobile Henan had violated the Anti-Monopoly Law and claimed RMB 870 for compensation. On May 6, 2019, the People’s Court of Jinshui District, Zhengzhou City, Henan Province, ruled against his claim.

According to SPC, the relevant market in this case should be defined as the mobile communication service market in Luoyang City, Henan Province, where China Mobile Henan has a dominant position. The SPC notes that, based on the general experience of market operations, it is often a typical manifestation of market competition between operators in the relevant market if they adopt

different practices for similar businesses, in which case there is no need to consider joint market dominance. Therefore, only when multiple operators in the relevant market perform the same conduct regarding the same type of business would there be a need to consider joint market dominance.

There are only three operators in the relevant market: China Mobile Group, China Unicom, and China Telecom. On the premise that there is no evidence that the three service providers have differences in the relevant operations, it can be considered that China Mobile Henan and the other two mobile communication service providers in Henan Province have consistent market actions in the relevant market. SPC determined that China Mobile Henan has a dominant position in the relevant market.

However, the SPC did not find that China Mobile Henan's alleged conduct constitutes an abuse of dominance. There is still an unresolved on-net agreement between the plaintiff and China Mobile Henan, rendering the plaintiff ineligible for the general technical requirements for transferring his number to other networks. Additionally, the plaintiff independently chose to apply for a mobile phone account with China Mobile Henan and became a user of a special number. Special number and ordinary number users are not counterparties with the same conditions when handling related services.

Therefore, the SPC found no legal basis for the plaintiff to claim that China Mobile Henan provided differential treatment to him and that its behavior constituted an abuse of market position given that ordinary number users can transfer to other networks within the service period. The SPC accordingly made a final judgment, dismissing the plaintiff's appeal and affirming the original judgment.

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