

# China Competition Policy & IP

MONTHLY UPDATE

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# Meetings/Seminars/Projects

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## Ninth International Forum on China's Fair Competition Policies Held in Beijing

[Read the Chinese version here](#)

On November 14, 2022, the Ninth International Forum on China's Fair Competition Policies was held in Beijing. The forum was hosted by the State Administration for Market Regulation (SAMR) and the Office of the Anti-Monopoly Commission of the State Council, and organized by SAMR's Competition Policy and Big Data Center and the Beijing Municipal Administration for Market Regulation. With the theme of "fair competition, a unified market, and high-quality development," the forum kicked off the first National Fair Competition Policy Publicity Week, which ran from November 14 to November 18, 2022.

The one-and-a-half-day forum included three sessions, with about 250 attendees from national and regional competition enforcement agencies, international organizations, relevant government departments, local market regulators, academia, enterprises, and law firms. Attendees engaged in in-depth discussions on critical and cutting-edge issues related to fair competition policies, antitrust regulation, and anti-unfair competition regulation, as well as high-quality and prosperous development.

Gan Lin – Deputy Director of SAMR, Director of the National Anti-Monopoly Bureau, and Secretary-General of the Office of Anti-Monopoly Commission of the State Council – delivered the opening speech for the forum. She pointed out that, in the past decade, China has further refined the fair competition legal and governance systems, steadily improved the fair competition market order, and increasingly deepened the international communications on fair competition, which creates a fair, transparent, and predictable competition environment for various market players.

Looking to the future, Ms. Gan emphasized that regulators should keep protecting and promoting fair competition, enhancing the effectiveness of antitrust and anti-unfair competition regulation, cultivating a culture of fair competition, and deepening the institutional opening in the competition field. Regulators should also continuously optimize the market-oriented, rule-of-law, and international business environment to stimulate market vitality, generate innovation momentum, and enhance people's well-being.

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# SAMR Chairs BRICS Coordination Committee on Anti-Monopoly Policy Meeting

[Read the Chinese version here](#)

On November 15, 2022, SAMR chaired the virtual meeting of the BRICS (Brazil, Russia, India, China, and South Africa) Coordination Committee on Anti-Monopoly Policy. Participants included Gan Lin, Deputy Director of SAMR, Director of the National Anti-Monopoly Bureau, and Secretary-General of the Office of Anti-monopoly Commission of the State Council; Victor Fernandes, Commissioner of Brazil's Administrative Council for Economic Defense (CADE); Maxim Shaskolsky, head of the Federal Antimonopoly Service of Russia; Dr. Sangeeta Verma, Acting Chairperson of the Competition Commission of India (CCI); and Doris Tshepe, Commissioner of the South African Competition Commission. Zhou Zhigao, Deputy Director General of the Competition Policy Coordination Department of SAMR, served as moderator.

At this meeting, the BRICS representatives exchanged experiences and shared respective practices. They all agreed to uphold the BRICS spirit of openness, inclusiveness, and cooperation. The BRICS countries will further deepen anti-monopoly communications and cooperation, protect fair competition in the market, and promote healthy and sustainable development in BRICS countries. The representatives expressed their appreciation for China's continuous efforts in promoting cooperation and communication on antitrust regulation and competition policies. In addition, Dr. Verma shared updates on preparations for the 8<sup>th</sup> BRICS International Competition Conference, which will be held in New Delhi in October 2023.

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# SAMR Highlights Enhancing Antitrust Regulation and Creating a Level Playing Field

[Read the Chinese version here](#)

On November 7, 2022, Wu Zhenguo, Director of SAMR's Antitrust Enforcement Division I, published an article on SAMR's official website outlining the historic achievements of China's antitrust work over the past decade. Highlights from the article are summarized below.

## **1. Noteworthy progress has been made in building a fair competition system**

Faced with the new requirements of high-quality development and new trends in the development of the digital economy, China has comprehensively and systematically improved the antitrust legal system drawing on its law enforcement experience and international practices. China revised the Anti-Monopoly Law (AML), which came into force on August 1, 2022, and amended multiple supporting regulations following the revised AML. China has also promptly formulated seven anti-monopoly guidelines. So far, China has established an antitrust

legal system that is based on the AML, backed by regulations and rules and supported by antitrust guidelines.

**2. Continuously enhancing the fundamental position of fair competition policy**

In 2021, China adopted the Opinions on Strengthening Antitrust Regulation and Deepening the Implementation of Fair Competition Policy, which is the first systematic and programmatic document to protect and promote fair competition. The revised AML elevates the “strengthening of the basic status of competition policy” to a statutory provision. China has also launched pilot projects to strengthen competition policy in free trade zones, conducted in-depth assessments of market competition, fully implemented the fair competition review system, and strengthened law enforcement against abuse of administrative power that excludes or restricts competition.

**3. Further establishment of a fair market competition landscape**

Over the past ten years, Chinese antitrust enforcement agencies have investigated and dealt with 277 cases of monopoly agreements and abuse of dominant market position, imposing fines of RMB 36.4 billion. The enforcement agencies have investigated and dealt with 345 cases of abuses of administrative power that excluded and restricted competition and reviewed 3,822 cases of concentration of undertakings, of which two were prohibited and 42 were approved with conditions.

**4. Achievements in curbing platform monopoly and disorderly expansion of capital**

SAMR has tightened antitrust enforcement to curb monopoly and disorderly competition in the platform economy. SAMR imposed administrative penalties on Alibaba and Meituan for their monopolistic conduct and ordered Tencent Music to lift its exclusive copyright requirement. SAMR also strictly reviewed the concentration cases in the field of platform economy by the law and prohibited the merger of Huya and Douyu. The enforcement actions of SAMR have prompted platform companies to consciously progress toward sound competition with continuous innovation and service quality upgrades.

**5. Improvement of a coherent and efficient antitrust enforcement system**

In the past decade, China has made remarkable progress in improving its antitrust enforcement system. SAMR was established in 2018, formulating a centralized antitrust enforcement system. The official launch of the National Anti-Monopoly Bureau in 2021 further enriched the anti-monopoly regulatory force.

**6. Growing international influence of China’s antitrust work**

China has joined the US and EU as one of the three largest antitrust jurisdictions worldwide. China signed 59 antitrust cooperation documents with 35 national and regional antitrust enforcement agencies. China also established a special chapter on competition policy in ten multi-bilateral free trade agreements (FTAs), including the China-South Korea and Regional Comprehensive Economic Partnership (RCEP) FTAs, and successfully held the 7<sup>th</sup> BRICS International Competition Conference.

## SPC Holds Press Conference on Strengthening Anti-Monopoly and Anti-Unfair Competition Judicial Work

[Read the Chinese version here](#)

On November 17, 2022, the Supreme People's Court (SPC) held a press conference to introduce anti-monopoly and anti-unfair competition judicial work and release typical judicial cases of the people's courts. SPC officials attended the conference and answered questions from reporters.

According to the SPC, from 2013 to June 2022, courts at all levels nationwide concluded 916 first-instance civil monopoly cases and 32,075 first-instance civil unfair competition cases, providing strong judicial protection for fostering a fair and competitive rule-of-law environment. The achievements related to national judicial work over the past decade are summarized as follows.

- 1. Strengthened adjudication of cases concerning fair competition and safeguarding market competition**

The people's courts at all levels have made efforts to strengthen antitrust adjudication and resolutely curb unfair competition to promote a fair competition environment of the rule of law.

- 2. Enhanced guidance for judging fair competition cases and improving the rules of legal application**

First, the courts have refined the rules of legal application in the field of competition, issuing 16 judicial interpretations on the protection of fair competition. Second, the courts have issued over ten judicial policy documents to further promote the implementation of the fair competition policy. Moreover, the courts have been enhancing the publicity of the rule of law on fair competition and actively creating a market-oriented, law-based, and international business environment.

- 3. Placed concurrent emphasis on regulation and development to promote high-quality development in emerging areas such as the digital economy**

The courts have focused on regulating the competition rules for the digital economy and curbing the disorderly expansion of capital. The courts also have actively explored the rules of protecting emerging fields to promote the healthy development of emerging industries.

- 4. Enhanced coordination between judicial and law enforcement**

The courts have supported and supervised the administrative enforcement of antitrust cases and promoted the alignment between standards of administrative enforcement and judicial adjudication to bridge these two regulation tools.

SPC also released ten typical antitrust cases and ten typical anti-unfair competition cases at the conference. The typical antitrust cases mainly show four characteristics. The courts: 1) severely sanction monopolistic acts and strive to eliminate and reduce their risk; 2) have regulated the exercising of rights and clarified the rules of antitrust judicial review of intellectual property abuse; 3) put the people's interests first, striving to ensure that people can benefit from fair competition; and 4) continue supporting and supervising antitrust enforcement per the law, and facilitate the alignment between the standards of administrative enforcement and judicial protection.

In addition, the ten typical anti-unfair competition cases released by SPC show three characteristics. The courts: 1) have stepped up judicial protection to maintain fair competition in the market; 2) promptly hear unfair competition cases, respond to the prevailing public concerns, and safeguard the legitimate rights and interests of consumers; and 3) have made efforts to strengthen the judicial protection of trade secrets, aligning the standards of legal application to relevant cases.

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## Revised Draft of the Anti-Unfair Competition Law Released for Public Comments

[Read the Chinese version here](#)

On November 22, 2022, SAMR released a revised draft of the Anti-Unfair Competition Law of the People's Republic of China and requested public comments. Highlights of the revision include:

### **1. Refining provisions on new types of unfair competition on the internet**

The draft improves the rules against unfair competition in the digital economy to regulate conduct that disrupts the order of competition emerging in the context of the new economy and new business models. Taking into account the characteristics of competition in the digital economy, the draft establishes detailed provisions on new types of unfair competition conduct, such as data collection and use, algorithms, and platform openness and interoperability. In response to the outstanding issues in the enforcement practice, the draft has refined the existing provisions on the manifestations of unfair competition.

### **2. Introducing provisions on new types of unfair competition conduct**

To reinforce the protection of the legitimate interests of small and medium-sized market players, the draft establishes new provisions on acts that undermine fair transactions, providing that operators with a comparatively advantaged position shall not unreasonably restrict or impose additional restrictions on the business activities of competing businesses or create unreasonable conditions that affect fair transactions and disrupt the order of fair competition in the market. The comparatively advantaged position can be evaluated based on factors such as

the party's strength in terms of technology, capital, user numbers, and industry influence, as well as the party's commercial importance to its counterparties. The draft also introduces new provisions on malicious trading conduct, prohibiting the deliberate implementation of malicious trading practices that obstruct or disrupt the normal operation of other operators.

### **3. Improving the provisions on legal liability**

The draft stipulates the legal liability for the new types of violations established in this revision and makes reasonable adjustments to the penalties for violations.

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## **Tianjin AMR Fines Jinyao for Alleged Monopoly**

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

In November 2022, Jinyao Pharmaceutical Co., Ltd. (Jinyao Pharmaceutical) announced that its subsidiary, Tianjin Jinyao Pharmaceutical Co., Ltd. (Tianjin Jinyao), would be fined RMB 27.72 million by the Tianjin Administration for Market Regulation (Tianjin AMR) for abusing its dominant market position when selling the drug Carmustine for injection.

Following an investigation, Tianjin AMR concluded that Tianjin Jinyao abused its dominant position in China's market for Carmustine for injection by selling the medication at unfairly high prices, which constituted a violation of the Anti-Monopoly Law. Tianjin AMR, therefore, ordered Tianjin Jinyao to cease the illegal conduct and imposed a fine of 2% of Tianjin Jinyao's 2019 annual sales, amounting to RMB 27.72 million.

Jinyao Pharmaceutical responded that it has promptly implemented rectification as required by the regulatory authorities and plans to make changes related to distribution channels, end-to-end retailing, and assurance of essential supplies. The company also stated that it would take the initiative to significantly lower the selling price of Carmustine for injection to increase sales and ensure the drug supply.



# Industry Updates

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## DuPont Announces Termination of Intended Rogers Acquisition

[Read the Chinese version here](#)

On November 2, 2022, the multinational chemical materials company DuPont announced that it had terminated its intended acquisition of Rogers Corporation's outstanding shares after failing to obtain timely clearance from all of the required regulators.

In November 2021, DuPont agreed to acquire Rogers for US \$277 per share, for a total of US \$5.2 billion. The transaction had been expected to be completed in the second quarter of 2022. However, DuPont scrapped the deal after failing to receive timely approval from China's antitrust regulators. The company will pay Rogers a termination fee of US \$162.5 million in accordance with the agreement.

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## SPC Finds Arbitration Clause Cannot Oust Court's Jurisdiction over Monopoly Agreement Disputes

[Read the Chinese version here](#)

On August 19, 2022, the SPC handed down a civil ruling on a dispute over the abuse of dominant market position in *Beijing Longsheng Xingye Technology Development Co., Ltd. (Longsheng) v. Honeywell Automation Control Solutions (China) Co., Ltd. (Honeywell) and Resideo Technologies Inc. (Resideo)*. The court found that the arbitration clauses agreed to by the parties in a contract did not oust the jurisdiction of the people's courts in a monopoly dispute over abuse of dominant market position.

In 2020, Longsheng filed a lawsuit with the Beijing Intellectual Property Court, arguing that Honeywell and Resideo had committed vertical monopoly conduct. Longsheng alleged that Honeywell persuaded Longsheng to enter into a distribution agreement requiring Longsheng to maintain its inventory and restricted its sales channels and resale prices, but failed to deliver on its promise to assist Longsheng in selling its inventory. In 2018, Honeywell underwent a business spin-off and handed over the relevant business to Resideo. In 2019, Resideo and Longsheng entered into a settlement agreement and a related supplemental agreement, which also imposed restrictions on Longsheng's resale price and sales channels. The distribution agreement and settlement agreement between Longsheng and Honeywell, and between Longsheng and Resideo, contained arbitration clauses providing that "any dispute relating to the agreement" shall be resolved through arbitration.

On August 30, 2021, the Beijing Intellectual Property Court found that the plaintiff's claims were addressed to the rights and obligations stipulated in the distribution and settlement agreements, neither of which involved the public interest nor breached the contractual agreement between the parties. The court did not accept Longsheng's claim, holding that – given the existence of an arbitration clause between the parties – Longsheng should have asserted its claim and sought relief by applying for arbitration rather than bringing a monopoly lawsuit. Longsheng then appealed to the SPC.

According to the SPC's decision, the case – as a civil monopoly dispute – should be adjudicated pursuant to the Anti-Monopoly Law (AML). Second, the arbitration clause could not be an *ipso facto* basis for excluding the people's courts from jurisdiction over monopoly agreement disputes. Contracts are only vehicles for the defendants' monopolistic conduct, whereas the terms of the contract involving monopolistic acts were the origin of the infringement. The identification and treatment of monopolistic acts in this case have gone beyond the rights and obligations between contractual counterparties. The SPC, therefore, found that the Beijing Intellectual Property Court had jurisdiction over the case.

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## SPC Rules on Weihai Water Company's Abuse of Market Dominance Dispute

[Read the Chinese version here](#)

On June 23, 2022, the SPC handed down its judgment in the case of abuse of dominant market position filed by Weihai Hongfu Real Estate Co., Ltd. (Hongfu) against Weihai Water Group Co., Ltd., ruling in favor of the plaintiff and requiring the defendant to pay reasonable expenses. This case has been selected as one of the top ten classic antitrust cases announced by the SPC on November 17, 2022.

Hongfu is a real estate development company, while Weihai Water Group is responsible for the planning, design, construction, and management of urban water supply and sewage facilities projects in Weihai. In January 2021, Hongfu filed a lawsuit against Weihai Water Group before the Qingdao Intermediate People's Court, requesting that Weihai Water Group compensate Hongfu for economic losses and pay reasonable litigation expenses. Hongfu claimed that Weihai Water Group abused its dominant market position by requiring Hongfu to dismantle a completed drainage project and replace it with the design and construction of a drainage project by Weihai Water Group's subsidiaries, Weihai Water Group Design Institute Ltd. and Weihai Water Group. Weihai Water Group has also conducted tied sales of commodities such as water pipes, equipment boxes, and water supply facilities, disallowing Hongfu to purchase water supply materials and facilities on its own.

The Qingdao Intermediate People's Court held that Weihai Water Group had a dominant position in the market for the construction and management of water supply and sewage facilities in Weihai.

However, the court dismissed Hongfu's claim as there was insufficient evidence to prove the abusive practices. Hongfu then filed an appeal to the SPC.

The SPC focused on whether Weihai Water Group's conduct constituted an abuse of its dominant market position and, if so, whether Hongfu's claim for damages and reasonable expenses should be upheld. According to the SPC's ruling, Weihai Water Group is the exclusive provider of urban public water supply services in Weihai and undertakes public utility management duties such as water supply facility audits and inspections, which require special caution not to exclude or restrict competition. In conducting its business, Weihai Water Group failed to inform and prompt the counterparties to the transaction that they could choose other enterprises with relevant qualifications, thereby implicitly restricting them from dealing with companies other than the operators designated by Weihai Water Group. Such conduct constitutes a restricted transaction behavior.

The SPC found that Weihai Water Group had abused its dominant market position and thus revoked the first-instance judgment. The SPC ordered Weihai Water Group to compensate Hongfu RMB 150,000 for reasonable expenses that Hongfu paid for investigating and stopping the monopolistic conduct.

## Learn More

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