

China Competition Policy & IP

MONTHLY UPDATE

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Meetings/Seminars/Projects

24th China-EU Competition Policy Week Seminar Held Online

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From December 12 to December 16, 2022, the Competition Policy Coordination Department of the State Administration for Market Regulation (SAMR) and the European Commission's Directorate-General for Competition (DG COMP) jointly held the online seminar of the 24th China-EU Competition Policy Week.

Law enforcement officers from SAMR and DG COMP conducted comprehensive research and discussions on hot issues of common concern – such as the latest developments in competition, antitrust, innovation, investigations of concentration of undertakings and fair competition, and state aid systems – to deepen mutual understanding. Both the Competition Policy Coordination Department of SAMR and DG COMP expressed their willingness to promote further communication and cooperation in competition policy and anti-monopoly matters. Both parties aim to improve relevant legislation and law enforcement, protect fair competition, and promote the healthy and sustainable development of bilateral economic and trade relations.

Regulatory News

SPC Releases 30 Initiatives to Boost Consumption

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On December 27, 2022, the Supreme People’s Court (SPC) released the “Opinions on Providing Judicial Services and Guarantees to Promote Consumption.” The opinions propose 30 specific initiatives – intended to accelerate high-quality economic development, promote the functions of the people’s courts, and implement the strategy of expanding domestic demand – to promote consumption. The 30 initiatives are grouped under four areas:

1. Strengthen the judicial protection of the rights and interests of consumers.
2. Strengthen the judicial protection of the rights and interests of producers and operators.
3. Maintain an honest, fair, and efficient market order.
4. Further improve the level of judicial services.

In particular, with regard to the e-commerce platform economy, the SPC has clarified that monopolistic and unfair competition practices – such as “either-or” conduct, discriminatory treatment, advertising fraud, and compulsory tying by platforms – are to be regulated by law. Judicial institutions should also safeguard the sound development of the platform economy and protect new business models and retail formats, such as “smart” stores (i.e., the integration of online and offline commerce by digitizing the entire retail value chain) and the sharing economy, in accordance with the law.

SAMR Highlights Regulation of Prices and Competition Order for Epidemic-Related Products

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On December 9, 2022, SAMR released the “Reminder on the Prices and Competition Order of Epidemic-Related Materials” to ensure the stable pricing and quality of epidemic-related drugs and materials, safeguard the market order, and protect the legitimate rights and interests of consumers.

The reminder draws from several laws and regulations, including the Pricing Law, Anti-Unfair Competition Law, Provisions on Administrative Penalties for Illegal Price Acts, Provisions on Clearly Marking Prices, Prohibition of Price Fraud, and others. It reminds producers and operators of epidemic-related products of the following requirements:

1. All shall abide by laws, regulations, and business ethics. Operators shall reasonably set prices and engage in fair competition.
2. All shall clearly indicate the price of their products and shall not charge any unspecified fees.
3. All shall not undertake price hikes for epidemic-related products.
4. All shall not mislead consumers or other operators into transactions with deceptive or misleading pricing mechanisms. Operators shall not perform illegal acts such as fraudulent price discounts and violations of pricing commitments. Operators of online platforms shall not use technical means to compel operators on the platform to make deceptive or misleading price tags.
5. All shall not engage in collusion with each other to manipulate market prices.
6. All shall not engage in price discrimination.
7. All shall not engage in advertising fraud or assist other operators in doing so.
8. All shall not mislead consumers by using commercial signs identical or similar to the names, packaging, and design of other well-known products.
9. All shall not fabricate or disseminate misleading or deceptive information to the detriment of other operators' reputations.

In addition to the self-examination expected of producers and operators, all levels of market supervision departments will strengthen law enforcement inspections and investigate and prosecute illegal acts in accordance with the law.

CNKI Fined by SAMR for Abuse of Dominance

[Read the Chinese version here](#)

On December 26, 2022, SAMR published its administrative penalty decision on Tongfang Knowledge Network (Beijing) Technology Co., Ltd., Tongfang Knowledge Network Digital Publishing Technology Co., Ltd., and China Academic Journals (CD Edition) Electronic Publishing House Co., Ltd. for abuse of dominance.

China National Knowledge Infrastructure (CNKI) is an academic platform that is jointly operated by Tongfang Knowledge Network (Beijing) Technology Co., Tongfang Knowledge Network Digital Publishing Technology Co., and China Academic Journals (CD Edition) Electronic Publishing House Co. CNKI mainly sells online database services to universities, scientific research institutes, and public libraries. It also provides value-added services such as academic misconduct detection.

In May 2022, SAMR filed an investigation into CNKI's alleged monopoly conduct. The relevant product market in this case was defined as the academic literature network database service market, and the relevant geographic market was defined as the national market of China. SAMR established that CNKI has a dominant position in the academic literature online database service market in China, with a market share exceeding 50%. Since 2014, CNKI has abused its dominant position to implement monopolistic behavior in two ways.

First, CNKI sold its database service at unfairly high prices, continuously and substantially increasing service prices. CNKI also split its databases with the intention of increasing total service prices.

Second, CNKI restricted academic journals from authorizing their academic work to any third party by requiring them to sign exclusive cooperation agreements, and by taking various reward and punishment measures to guarantee the implementation of the exclusive agreements.

CNKI's monopolistic conduct has excluded and restricted competition in the Chinese academic literature network database service market. This infringed on users' legitimate rights and interests, reduced the innovation and development of relevant markets, and hindered academic exchanges and dissemination.

Given this, SAMR fined CNKI RMB 87.6 million, which is 5% of its domestic sales in 2021, and ordered the company to cease its illegal conduct.

Beijing AMR Imposes Administrative Penalty on Straumann for Monopoly

[Read the Chinese version here](#)

On December 30, 2022, SAMR released the administrative penalty decision of the Beijing Administration for Market Regulation (Beijing AMR) against Straumann (Beijing) Medical Device Trading Co., Ltd. (Straumann) for reaching a vertical monopoly agreement.

The relevant products in this case are Straumann implants, which are oral implants – namely, dental implants or artificial tooth roots – used for surgical placement in the mouth to ensure the integrity of the upper and lower jaw. The Straumann implants are Class III medical device products. The relevant geographic market is China. According to the investigation, Straumann's implants are industry leaders in terms of quality, scope of indications, implant success rate, and stability. They are at the forefront of the Chinese national market in terms of sales volume and revenue, with a high market share.

According to the investigation, Straumann divided its end customers into three categories: public hospitals, general private dental institutions, and dental support organizations (DSOs) (chain-type private dental institutions). DSO customers were further subdivided into large, medium, and small, according to the number and size of dental institutions. For customers of general private dental

institutions, public hospitals, and DSOs (excluding large DSOs), Straumann directly set minimum resale prices for the different sales regions across the country. Straumann engaged in negotiations as an upstream operator for distributors and large DSO customers, determining the resale price of Straumann implants. Furthermore, Straumann implemented multiple measures to maintain the high costs of Straumann implants, including monitoring distributors' resale prices, establishing a price management system, and penalizing distributors for selling at low prices.

Beijing AMR found that Straumann's conduct of fixing resale prices has rendered dental institutions and patients to bear high prices for implants, detrimental to the interests of consumers and the public. Beijing AMR, therefore, ordered Straumann to cease its illegal conduct and imposed a fine of 3% of Straumann's 2020 annual sales, which amounted to RMB 34,385,525.65.

Yongfu Water Company Penalized for Abuse of Dominance

[Read the Chinese version here](#)

On December 29, 2022, SAMR announced the administrative penalty imposed by the Guangxi Zhuang Autonomous Region Administration for Market Regulation (Guangxi AMR) on the Guangxi Yongfu County Water Supply Company (Yongfu) for abusing its dominant market position.

Guangxi AMR launched an investigation into the alleged abuse of dominant market position by Yongfu in November 2021. According to the investigation, the relevant market, in this case, is the urban public tap water supply service market in Yongfu County, Guilin City, in which Yongfu holds the exclusive right to operate the water supply service, rendering it a 100% market share. Since 2017, Yongfu has – as a condition of providing the urban public tap water supply service – demanded that customers only purchase Yongfu's construction services for water supply works and water supply materials. Such conduct leveraged Yongfu's market power in the urban public tap water supply service market to the markets for water supply construction services and materials, thereby excluding and restricting competition in both markets and undermining the legitimate rights and interests of consumers.

On November 14, 2022, Guangxi AMR issued its administrative penalty decision, ordering Yongfu to cease its illegal conduct and imposing a fine of 3% of Yongfu's annual sales in 2020, which amounted to RMB 312,010.65.

Zhejiang AMR Fines Zhejiang Civil Explosives Association for Monopoly

[Read the Chinese version here](#)

On December 16, 2022, SAMR published the administrative penalty decision of the Zhejiang Administration for Market Regulation (Zhejiang AMR) against the Zhejiang Civil Explosives Association for a monopoly.

On September 23, 2021, Zhejiang AMR launched an investigation into the Zhejiang Civil Explosives Association for its suspected behavior of reaching and implementing a monopoly agreement. The relevant product in this case is civilian explosives, which include various kinds of gunpowder, explosives, detonators, fuses, and other ignition and detonation equipment used for non-military purposes. Since 2015, the Zhejiang Civil Explosives Association has assisted civil explosives industry market players – including civil explosives manufacturers and general distribution companies – in the province of Zhejiang in reaching and implementing various monopoly agreements. This has included:

1. Monopoly agreements between civil explosives manufacturers in Zhejiang to fix or change the price of civil explosives.
2. Monopoly agreements between civil explosives manufacturers and general distribution companies to fix resale prices and restrict the production or sales of civil explosives.
3. Monopoly agreements between civil explosives manufacturers and general distribution companies to boycott civil explosives trade outside of the association.

The Zhejiang Civil Explosives Association has also organized civil explosives manufacturers and general distribution companies in Zhejiang to reach and implement monopoly agreements with companies in the civil explosives industry outside the province of Zhejiang.

On September 15, 2022, Zhejiang AMR ordered the Zhejiang Civil Explosives Association to cease its illegal behavior and imposed a fine of RMB 400,000.

Northeast Pharmaceutical Fined for Abuse of Dominance

[Read the Chinese version here](#)

On December 9, 2022, the Liaoning Administration for Market Regulation (Liaoning AMR) issued a Notice of Administrative Penalty, deciding to fine Northeast Pharmaceutical Group Co., Ltd. (Northeast Pharmaceutical) RMB 133 million for its abuse of dominance in China's levocarnitine active pharmaceutical ingredient (API) market.

On November 4, 2019, Liaoning AMR launched its investigation into Northeast Pharmaceutical's suspected monopolistic behavior. The local regulator found that levocarnitine injection is a critical drug for the treatment of several rare diseases. Northeast Pharmaceutical is the main supplier of the API for levocarnitine injections that meet pharmaceutical standards. Its levocarnitine sales scale and market share rank among the top three in the world.

Liaoning AMR found that Northeast Pharmaceutical abused its dominant market position in China's levocarnitine API market from November 2018 to June 2019, selling the levocarnitine API at unfairly high prices, violating the Anti-Monopoly Law. Liaoning AMR, therefore, decided to impose a fine of RMB 133 million, which is 2% of the company's sales in China in 2018.

Industry Updates

SAMR Conditionally Approves Korean Air's Acquisition of Asiana Airlines

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On December 26, 2022, SAMR announced its approval of the acquisition of Asiana Airlines Inc. (Asiana Airlines) by Korean Air Co., Ltd. (Korean Air) with restrictive conditions.

Korean Air and Asiana Airlines are both Korean companies that engage in air transport for passengers and air cargo service. In November 2020, Korean Air and Asiana Airlines signed an acquisition agreement. Upon completion of the concentration, Korean Air will obtain sole control of Asiana Airlines.

Korean Air and Asiana Airlines have horizontal overlaps in two relevant markets. One is the market for the scheduled air transport service for passengers, of which the relevant geographic market was defined as 17 two-way flight routes between cities in China and Korea. The other is the market for air cargo service, of which the relevant geographic market was defined as the two-way flight route between China and Korea.

After carefully reviewing and analyzing the acquisition, SAMR found that it would further increase the market concentration, grant greater market power to the merged entity, and enhance the incentives and ability of competitors in the relevant markets to coordinate prices. Since the acquisition would eliminate or restrict competition in the market for scheduled air passenger transport service on 15 flight routes between cities, SAMR decided to approve the transaction with the following remedies, which are effective for ten years:

- Both parties and the post-concentration entity shall commit to transferring a certain number of flight slots on nine routes and returning part of the traffic rights on four routes at the request of any new Korean entrants to reduce the market share of the post-concentration entity to below 50%.
- Both parties and the post-concentration entity shall maintain a stable supply on the Seoul-Guangzhou and Seoul-Dalian routes, as measured by the frequency of flights and the number of seats. Both parties and the post-concentration entity shall not decline renewal proposals on 15 routes for air passenger transport agreements with Chinese airlines without justifiable reasons.
- Both parties and the post-concentration entity shall guarantee auxiliary services for air passenger transport at airports in Korea for 15 flight routes following the fair, reasonable, and non-discriminatory principle.

- Both parties and the post-concentration entity shall not increase air ticket prices or ground service prices beyond the average cost and reasonable profit range without justified reasons. Both parties and the post-concentration entity shall not implement anticompetitive pricing strategies that eliminate or restrict competition to increase market share.
- During the withdrawal and change of relevant airline alliances by Asiana Airlines, both parties and the post-concentration entity must take necessary data protection measures and establish a data protection system to avoid customer data breaches.

Copyright Infringement and Unfair Competition Dispute between NetEase and Miniplay Sentenced

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On November 30, 2022, the Guangdong High People's Court rendered its final verdict for the lawsuit of NetEase Information Technology (Guangzhou) Co., Ltd. and NetEase Information Technology (Shanghai) Co., Ltd. against Shenzhen Miniplay Technology Co., Ltd. (Miniplay).

Minecraft is a sandbox game developed by the Swedish company Mojang Studios in 2009. In May 2016, NetEase obtained the exclusive right to operate *Minecraft* in China and defend against any intellectual property infringement and unfair competition. In the same month, Miniplay launched *Mini World*, a mobile game that has many overlapping elements with *Minecraft*.

In 2019, NetEase filed a lawsuit with the Shenzhen Intermediate People's Court, accusing *Mini World* of copyright infringement and unfair competition, and demanding Miniplay cease its infringement conduct and compensate RMB 50 million. The Shenzhen Intermediate People's Court found that *Mini World* constituted copyright infringement and, thus, ordered Miniplay to delete the infringing game elements and compensate NetEase for more than RMB 21.13 million. Both parties were dissatisfied and appealed to the Guangdong High People's Court.

The Guangdong High People's Court held that the screens of the two games fall into the scope of cinematic-like works, namely works created by a process analogous to cinematography (also referred to as "audio-visual works" in the revised Copyright Law that went into effect in June 2021). However, the similarity between the two games lies in the design of the game elements rather than the game screen. Therefore, the Guangdong High People's Court rejected NetEase's claim for copyright infringement. Meanwhile, the court concluded that Miniplay plagiarized game element design, seized core personalized business value, and snatched NetEase's business opportunities; this behavior constituted unfair competition. The court found that Miniplay's infringement profits far exceed the amount of compensation claimed by NetEase, thereby fully supporting NetEase's claim for compensation.

Ultimately, the court ordered Miniplay to delete 230 infringing elements in *Mini World* and to compensate NetEase RMB 50 million.

SPC's Second-Instance Judgment Upholds Civil Claim in SAIC RPM Case

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On December 15, 2022, the SPC handed down the second-instance judgment in a dispute brought by consumer Miao Chong against SAIC General Motors Sales Co., Ltd. (SAIC) and Shanghai Yilong Automobile Sales and Service Co., Ltd. (Yilong), ordering the defendants to pay RMB 10,000 to compensate the plaintiff for losses suffered due to SAIC's monopolistic conduct.

On December 19, 2016, the Shanghai Development and Reform Commission imposed an administrative penalty on SAIC for its resale price maintenance (RPM) conduct. In 2018, Miao Chong, a car owner who had suffered damages due to the high resale price, sued SAIC and its distributor Yilong before the Shanghai Intellectual Property Court (SIPC), demanding compensation of RMB 10,000 for losses resulting from SAIC's monopolistic conduct and RMB 7,500 for other reasonable expenses. On February 28, 2020, the SIPC rejected all of the plaintiff's claims. Miao Chong then filed an appeal to the SPC.

The SPC revoked the first-instance judgment of the SIPC and articulated the distribution of the burden of proof, the subject of civil damages, and the determination of damages in the civil indemnity proceedings subsequent to the antitrust enforcement of the RPM conduct as follows:

1. If the administrative penalty imposed on the defendants by the antitrust law enforcement agency has not been subject to administrative proceedings within the statutory time limit or has been confirmed by an effective people's court ruling, the plaintiff in the relevant civil monopoly dispute case can claim that the monopolistic conduct of the defendants has been established without having to bear the burden of proof, unless there is sufficient evidence to the contrary.
2. If an operator reaches and implements a vertical monopoly agreement of RPM and a consumer files a civil lawsuit for compensation, it shall be determined that the ones who have reached and implemented the vertical monopoly agreement have jointly constituted the act of infringement.
3. If an operator reaches and implements a vertical monopoly agreement of RPM and a consumer files a civil lawsuit for compensation, the amount of compensation shall be the difference between the minimum resale non-competitive price set by the operator and the competitive price.

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