

China Competition Policy & IP

MONTHLY UPDATE

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Meetings/Seminars/Projects

SAMR Director Vows Efforts to Promote Fair Competition

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On March 7, 2023, Luo Wen, Director of the State Administration for Market Regulation (SAMR), expressed his views on current hot topics in the field of market regulation at the first meeting of the 14th National People's Congress.

Mr. Luo pointed out that fair competition is an inherent requirement of a market economy and an important guarantee for stimulating the vitality of various business entities. He put forward several requirements for continuously improving the market environment for fair competition. These included:

1. **Building a solid legal basis for fair competition.** SAMR will keep striving for clearer regulatory rules and law enforcement procedures to facilitate the development of all types of enterprises. Currently, SAMR is working on revising the Anti-Unfair Competition Law and improving supporting regulations and guidelines, including those related to the declaration threshold for the concentration of undertakings.
2. **Improving a normalized supervision mechanism.** SAMR will strengthen the assessment of market competition and improve preventive supervision in key areas such as the digital economy and industries concerning people's livelihoods. SAMR will also employ multiple measures – including administrative guidance, administrative inquiries, and administrative penalties – to help companies improve compliance management and correct violations against competition laws in a timely manner.
3. **Eliminating local protectionism and administrative monopoly.** SAMR will continuously improve the fair competition review system, including abolishing regulations that hinder the national unified market and fair competition. SAMR will also resolutely curb the abuse of administrative power, which excludes and restricts market competition.

Annual IP Court Report Issued by SPC

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On March 30, 2023, the Supreme People's Court (SPC) released the 2022 Annual Report of the Intellectual Property Court (IP Court), which summarized the judicial efforts of the SPC's IP Court during 2022.

In 2022, the SPC's IP Court handled a total of 6,183 anti-monopoly disputes and appeals related to technology-related intellectual property disputes, indicating a year-over-year increase of 18%; of these, 3,468 cases were concluded. The average number of cases handled and concluded per judge was 142.5 and 79.9, respectively. The average handling time for cases concluded in 2022 was 165.2 days, with jurisdictional disputes taking 28.6 days, civil second-instance cases taking 179 days, and administrative second-instance cases taking 215 days. Among the 3,468 cases concluded in 2022, 58.8% upheld the original judgment, with the withdrawal and mediation rate being 25.8% and the retrial and correction rate being 13.5%.

Cases handled by the IP Court in 2022 exhibited the following four characteristics:

1. **Continued growth in the number of infringement cases.** In 2022, the IP Court accepted 2,956 new civil second-instance substantive cases, up 15.1% year-over-year, which has maintained the growth momentum for the fourth consecutive year. Among them, there were 1,583 cases of invention and utility model patent infringement, up 14.5% from 2021; 73 cases of technology secret infringement, up 2.8% from 2021; and 134 cases of new plant variety infringement, up 112.7% from 2021.
2. **A decline in the number of administrative cases for the first time.** In 2022, the IP Court accepted 887 new administrative second-instance cases, 403 fewer cases than the previous year.
3. **A large proportion of cases involving strategic emerging industries.** In 2022, the IP Court accepted 1,338 new cases involving strategic emerging industries, such as information technology, biotechnology, and high-end manufacturing, accounting for 30.4% of all new cases accepted, up 3.5% from 2021.
4. **Enhanced functional role of second-instance procedures.** The percentage of cases remanded for retrial declined for the third consecutive year, falling from 2.2% in 2020 to 0.5% in 2022, with the remand rate for civil second-instance substantive cases decreasing from 3.4% in 2020 to 0.7% in 2022. Meanwhile, the rate of reversal in civil second-instance substantive cases increased for the fourth consecutive year, from 10.4% in 2019 to 18.1% in 2022.

SPC Releases Its 2022 Work Report

[Read the Chinese version here](#)

On March 8, 2023, the SPC released its 2022 Work Report, highlighting the court's ongoing efforts to maintain fair competition in the marketplace over the past five years and setting out its work tasks for 2023.

With regard to innovation-driven development, the SPC strengthened the protection of intellectual property rights (IPR), with special attention on high-tech industries such as 5G communications, new energy and materials, and high-end equipment manufacturing. The SPC concluded 219,400 intellectual property cases in 2022, up 221.1% year-over-year. The SPC also elevated damages for IPR infringement cases, with an overall increase of 153% compared to 2018, indicating a continuously enhanced judicial protection of intellectual property.

The SPC strengthened its anti-monopoly and anti-unfair competition judiciary function to safeguard fair competition in the market, concluding 29,000 monopoly and unfair competition cases over the past five years. These cases involved conduct such as infringement of commercial secrets and malicious registration of trademarks, with strict punishment administered for acts that hindered fair competition and harmed the interests of the public. The SPC also strengthened the judicial protection of traditional brands and well-known trademarks. The court also explored the rules of data rights protection, served the digital economy, and promoted the development of e-commerce.

In addition, the SPC has clarified rules for judicial protection of data rights and resolutely curbed the abuse of data and algorithms that eliminate or restrict competition, such as discriminatory pricing through the use of big data and "either-or" conduct. The SPC has also made efforts to step up judicial supervision of new business models, such as the livestreaming market, in order to protect the innovative operations.

In its outlook for 2023, the SPC emphasizes that the court will continue to strengthen judicial protection of intellectual property, enhance judicial work on anti-monopoly and anti-unfair competition, and improve the appeal hearing mechanism for intellectual property cases at the national level.

SAMR Reports on 2022 Law Enforcement Work

[Read the Chinese version here](#)

On March 13, 2023, SAMR released its 2022 Annual Report on the Construction of a Rule of Law Government, which outlines its law enforcement work for 2022.

SAMR promoted the formulation and revision of 10 laws and regulations in 2022. This included the first revision of the Anti-Monopoly Law, which incorporated the encouragement of innovation into

the legislative purpose, elevated the status of competition policy and the fair competition review system to legal provisions, and further improved the anti-monopoly institutional arrangements. SAMR also accelerated the revision of the Anti-Unfair Competition Law and introduced the “Regulations on Promoting the Development of Individual Industrial and Commercial Households,” which ensures equal access and fair competition for self-employed individuals.

In 2022, SAMR investigated and handled a total of 73 cases of abuse of administrative power that excluded and restricted competition, 9,069 unfair competition cases, and 29 cases of monopoly agreements and abuse of market dominance, with fines for the latter cases totaling RMB 735 million. In terms of merger review, SAMR concluded the review of 794 cases of concentration declarations and penalized 32 cases of failure to declare. SAMR also organized and guided all regions and departments to carry out fair competition review of policies and measures, implemented four innovative pilot projects on the fair competition review as well as a national pilot project on trade secret protection, and conducted the first third-party assessment of fair competition review at the national level.

Regulatory News

Seven Provinces and One City Sign Anti-Monopoly Pilot Agreement on the Review of Concentrations

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On March 17, 2023, the local market regulators of seven provinces – Henan, Hubei, Hunan, Sichuan, Guizhou, Yunnan, and Tibet – and one city, Chongqing, reached a consensus and signed the Framework Agreement on Cooperative Anti-Monopoly Pilot Examination of Concentration of Operators. The pilot agreement aims to further enhance the efficiency of the anti-monopoly review of concentration of undertakings, boost local enterprises to expand business scale, improve market competitiveness, and create a good business environment.

According to the agreement, the eight provinces and cities will jointly carry out cross-regional anti-monopoly exchanges and collaborative supervision. They will promote mutual communication and information sharing and enhance cross-provincial antitrust enforcement collaboration.

SAMR Issues Four Supporting Regulations to the Anti-Monopoly Law

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On March 24, 2023, SAMR issued four formal supporting regulations to the Anti-Monopoly Law: 1) the Regulation on Prohibiting Monopoly Agreements, 2) the Regulation Prohibiting Conduct Abusing Dominant Market Position, 3) the Regulation on the Review of Concentrations between Business Operators, and 4) the Regulation Preventing Conduct Abusing Administrative Powers to Eliminate or Restrict Competition. All four of the new regulations went into effect on April 15, 2023.

The four supporting regulations focus on the following revisions, improvements, and expansions in response to outstanding issues in Anti-Monopoly Law enforcement:

- **Fine-tuning the relevant provisions according to the revised 2022 Anti-Monopoly Law.** The refined enforcement rules include the administrative inquiry procedure, the horizontal monopoly agreement, and the hub-and-spoke agreement under the provisions of the monopoly agreement, as well as enforcement details such as the calculation of operators' revenue under the concentration review provisions.
- **Optimizing supervision and enforcement procedures.** The four regulations clarify the obligations of relevant entities and individuals to cooperate with the investigation and handling

of abuses of administrative power; refine the provisions of the investigation into concentrations not up to the declaration threshold; optimize the procedures for the review of simple cases of operator concentration; and specify procedures in the investigation of monopoly agreements and abuse of dominant market position cases.

- **Enhancing the liability of relevant entities.** For example, the four regulations provide the scope of application for mitigation or exemption from punishment for the relevant persons liable in monopoly agreements.

Tianjin AMR Imposes Administrative Penalty on Tianjin Jinyao for Abuse of Dominance

[Read the Chinese version here](#)

On March 14, 2023, the Tianjin Administration for Market Regulation (Tianjin AMR) published an administrative penalty decision against Tianjin Jinyao Pharmaceutical Co., Ltd (Tianjin Jinyao), a subsidiary of Jinyao Pharmaceutical Co., Ltd.

According to the decision, the relevant market in the case is defined as the market for carmustine for injection in China, in which Tianjin Jinyao owns a 100% share and has strong market control. Because it was difficult for other operators to enter the relevant market, Tianjin Jinyao was determined to have a dominant market position. Upon investigation, Tianjin Jinyao abused its market dominance by selling carmustine for injection at unfairly high prices between June 2017 and September 2020. Up to the launch of the investigation, the average unit price of carmustine for injection surpassed RMB 1,500, an increase of approximately 7.5 times compared to that in 2016. Tianjin AMR concluded that such conduct had undermined the order of competition in the carmustine for injection market in China and impaired the interests of consumers.

Therefore, Tianjin AMR ordered Tianjin Jinyao to cease its illegal conduct and imposed a fine of 2% of its 2019 annual sales, which amounted to RMB 27,721,311.36.

Industry Updates

Second-Instance Judgment on Unfair Competition Dispute Involving Short Video Platform Data Collection Handed Down

[Read the Chinese version here](#)

The Beijing Intellectual Property Court (Beijing IP Court) issued its second-instance judgment on the unfair competition dispute between Beijing Chuangrui Culture Media Co., Ltd. (Chuangrui) and Beijing Microseeding Horizon Technology Co., Ltd. (Microseeding Horizon). The Beijing IP Court upheld the original judgment and ruled that Chuangrui should compensate Microseeding Horizon with 5 million RMB for economic damages. The case is the first unfair competition dispute involving data collection on a short video platform.

Chuangrui operates a short video app called Shuabao. Microseeding Horizon, the operator of the Douyin short video platform, alleged that Chuangrui had obtained over 50,000 short video clips, information of over 10,000 users, and 127 user comments from the Douyin platform for display and distribution on Shuabao without permission. Microseeding Horizon argued that such conduct constituted unfair competition and therefore sought compensation from Chuangrui for RMB 40 million for economic losses. The court of first instance found that Chuangrui's conduct did constitute unfair competition and ordered Chuangrui to compensate Microseeding Horizon with RMB 5 million. Chuangrui then appealed to the Beijing IP Court.

The Beijing IP Court held that Microseeding Horizon developed a non-original collection of data – consisting of short video clips, users' personal information, and user comments – by legitimate operations and with a huge investment of resources, which could bring the company substantial economic benefits and a competitive edge. Meanwhile, Chuangrui, as the operator of Shuabao, resorted to improper means to obtain the substantive content of Douyin's non-original data collection, which not only weakened Microseeding Horizon's competitive advantage but also impaired consumer welfare and the market competition order in the short video industry. Therefore, the Beijing IP Court found that the judgment of the first-instance court was reasonable and should be upheld.

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