

China Competition Policy, IP & Digital Economy

MONTHLY UPDATE

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Regulatory News

Two Anhui Energy Companies Fined for Monopoly

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On May 24, 2023, the State Administration for Market Regulation (SAMR) released the administrative penalty decision of the Anhui Administration for Market Regulation (Anhui AMR) against two energy companies – Bengbu Anye Clean Energy Co., Ltd. (Anye) and Bengbu Xinyuan Gas Co., Ltd. (Xinyuan) – for reaching and implementing a monopoly agreement.

According to Anhui AMR's investigation, the actual controllers of Anye and Xinyuan reached verbal agreements to adjust the sales prices of bottled Liquefied Petroleum Gas (LPG) in January and September of 2018. The two energy companies mandated their subordinate gas delivery stations to strictly comply with the minimum prices set by the companies and threatened to impose penalties – such as fines, confiscation of deposits, and disqualification from operating – for violations. The two energy companies also jointly established a company, Bengbu Anxin Gas Safety Technology Service Co., Ltd., which was authorized to inspect and manage the subordinate gas delivery stations and gas delivery workers to ensure their compliance.

Anhui AMR concluded that Anye and Xinyuan had reached and implemented a price-fixing agreement in violation of the Anti-Monopoly Law. The Anhui AMR ordered the two energy companies to stop their illegal conduct, confiscated their illegal proceeds, and imposed a fine of 4% of each of the two company's domestic sales in 2019. The total penalty for the two companies amounted to RMB 1,755,985.17.

SAMR Fines Grand Pharma and Healcare for Monopoly Agreement and Abuse of Dominance

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On May 21, 2023, SAMR released its administrative penalty decision against China Grand Pharmaceutical Group Limited (Grand Pharma) and Wuhan Healcare Pharmaceuticals Co., Ltd (Healcare) for reaching and implementing a monopoly agreement, as well as the administrative penalty decision against Grand Pharma for abuse of dominance.

The relevant products in this case are norepinephrine and epinephrine APIs, which are used to produce norepinephrine injection (for the treatment of acute myocardial infarction) and epinephrine hydrochloride injection (for resuscitation in the event of cardiac arrest), respectively. Between June 2016 and July 2019, Grand Pharma and Healcare, as competing operators, reached and

implemented a horizontal monopoly agreement regarding the sale of norepinephrine API and epinephrine API, whereby it was agreed that Healcare would halt the sale of both APIs in exchange for compensation from Grand Pharma. Norepinephrine and epinephrine hydrochloride injections are essential medications and critical emergency drugs paid for by medical insurance. Thus, Grand Pharma and Healcare's conduct not only excluded and restricted market competition but also increased prices of norepinephrine and epinephrine hydrochloride injections, leading to rising costs for the medications and national medical insurance expenditures.

In addition, SAMR found that Grand Pharma had a dominant market position in the relevant market – the market for norepinephrine API and epinephrine API in China. Grand Pharma has a share of more than 50% in both the norepinephrine and epinephrine API markets and also has a pronounced technological advantage and significant market control. Downstream pharmaceutical preparation companies are highly dependent on Grand Pharma in transactions, and it is relatively difficult for other operators to enter the relevant market. From May 2010 to April 2021, Grand Pharma abused its dominant market position by attaching multiple unreasonable trading conditions to the sale of the two APIs. Grand Pharma's downstream customers were required to sell the norepinephrine and epinephrine hydrochloride injections they produced to Grand Pharma at low prices and to provide rebates to the pharmaceutical group. They also had to sell their products according to the regions and prices requested by Grand Pharma.

Based on the findings of the horizontal monopoly agreement between the two companies and the abusive conduct of Grand Pharma, SAMR imposed administrative penalties on both parties. Against Grand Pharma, SAMR confiscated its illegal earnings of RMB 149 million and imposed a fine of RMB 136 million (approximately 3% of its domestic sales in 2019), totaling RMB 285 million in forfeitures. Against Healcare, SAMR confiscated its illegal earnings of RMB 30.9248 million and imposed a fine of RMB 4.1268 million (approximately 2% of its domestic sales in 2019).

Zizhu Pharma Fined by Beijing AMR for RPM

[Read the Chinese version here](#)

On May 29, 2023, SAMR released the administrative penalty decision of the Beijing Administration for Market Regulation (Beijing AMR) against Beijing Zizhu Pharmaceutical Co., Ltd. (Zizhu Pharma) for its resale price maintenance (RPM) conduct.

In this case, the relevant products are the emergency contraceptive pills Jin Yuting and Yuting, two levonorgestrel tablets of different dosages. The relevant geographical market was national. It was found that, from 2015 to 2021, Zizhu Pharma reached vertical monopoly agreements with its primary and secondary distributors nationwide to fix and restrict the resale prices of the relevant products. Zizhu Pharma also took multiple measures to ensure the implementation of the monopoly agreement, including refining its sales management system, hiring a data company to monitor the resale prices of its distributors, and reinforcing its internal monitoring mechanisms.

Beijing AMR found that Zizhu Pharma's conduct impeded the normal functioning of the market price mechanism, harmed the order of market competition, and undermined the interests of consumers. Therefore, the regulator ordered Zizhu Pharma to stop the illegal conduct and imposed a fine of 2% of its 2020 sales in China, amounting to RMB 12,643,600.

SAMR Circulates Draft Regulations on Fair Competition Review for Public Comments

[Read the Chinese version here](#)

On May 12, 2023, SAMR published the "Regulations on Fair Competition Review (Draft for Public Comments)," soliciting opinions from the public. The new regulations aim to further enhance the fair competition review system, strengthen the foundation of competition policy, and facilitate the construction of an efficient, fair, and open market.

The draft regulations consist of 41 articles across five chapters, which include:

- **General Provisions:** The General Provisions set out the legislative purpose of the regulations, define the "fair competition review," and request the establishment of a coordination mechanism for fair competition review at both the national and local levels.
- **Review Content:** The regulations list the specific requirements for review content and further improve it in four aspects, including in market access and exit, free flow of goods and factors, effect on production and operation costs, and effect on production and operation behavior. This chapter also refines the application circumstances of the exemption clause.
- **Review Procedures:** The regulations establish a fair competition review system for major policies and measures at the local level. They stipulate that administrative organs should specifically take advice on fair competition review in the process of soliciting opinions on policies and measures, and provide for an annual reporting mechanism.
- **Supervision and Protection:** The regulations provide for supervision mechanisms such as administrative agencies' self-correction mechanisms, reporting systems, inspection and examination systems, and work assessment systems. They also stipulate mechanisms for the articulation of the work of fair competition review and other work, including anti-monopoly enforcement supervision.
- **Supplementary Provisions:** These cover references, confidentiality, detailed measures, and implementation dates.

SAMR Releases Draft Antitrust Guidelines on Trade Associations for Public Comments

[Read the Chinese version here](#)

On May 15, 2023, SAMR published the “Antitrust Guidelines on Trade Associations (Draft for Public Comments),” soliciting opinions from the public. As supporting rules to the revised Anti-Monopoly Law (AML), the guidelines aim to prevent industry associations from engaging in activities prohibited by the AML and to enhance the positive role of industry associations in promoting industry development and safeguarding the market competition order.

Trade associations – legal entities composed of economic organizations and individuals in the same industry – exercise functions including industry service and self-discipline management. In carrying out such functions, trade associations should improve the compliance standards for antitrust issues, and strictly comply with the relevant laws and regulations in addition to the provisions of the guidelines.

The guidelines emphasize that trade associations are prohibited from participating in monopoly agreements, including horizontal and vertical ones. Additionally, the guidelines set out three types of high-risk behaviors that industry associations should avoid:

1. Promoting the exchange and discussion of competitively sensitive information among operators in the industry, or notifying competitively sensitive information;
2. Publishing prices that can guide the pricing of operators in the industry, such as guide prices, benchmark prices, reference prices, suggested prices, etc., or developing price calculation formulas for the reference of operators in the industry; and
3. Publishing inaccurate or exaggerated information on market conditions such as cost trends, supply, and demand conditions.

The guidelines also encourage trade associations to strengthen their internal compliance management by establishing or enhancing an effective antitrust compliance management system. It’s noted that – to prevent potential violations of the AML and related regulations – trade associations should pay special attention to competition compliance when formulating industry regulations.

Expert Proposal Draft of the Digital Economy Promotion Law Published

[Read the Chinese version here](#)

In May 2023, the “Digital Economy Promotion Law (Expert Proposal Draft)” was released at an academic seminar, Constructing a Legal Knowledge System in Emerging Fields, held in Hangzhou, Zhejiang Province. The draft – a consultation report with suggestions on how to improve digital economy-related legislation – consists of eight chapters and 66 articles, covering general provisions, digital infrastructure construction, digital industrialization and industrial digitization, data resources development, utilization and protection, digital governance, digital economy promotion and protection, legal responsibilities, and supplementary provisions.

According to the draft, China should focus on accelerating the digital transformation of traditional infrastructure while promoting the construction of a new generation of digital infrastructure. The latter category includes mobile communication networks, big data centers, industrial internet, internet of things, internet of vehicles, artificial intelligence, blockchain, and satellite communications. The construction of digital application scenarios includes – among others – smart agriculture, education, healthcare, transportation, logistics, and tourism, plus digital finance and commerce. Constructing these digital application scenarios would promote the deep integration of digital technology and the life service industry, enrich service offerings, and enhance service quality and efficiency. Additionally, to protect the legitimate rights and interests of market players in the digital economy, the market regulatory authorities are entitled to investigate and deal with illegal conduct under the Anti-Monopoly and Anti-Unfair Competition Laws.

The draft also applies to foreign enterprises in the digital economy. The prohibited conducts outlined in the draft include foreign enterprises engaging in economic activities with Chinese entities and individuals that violate relevant laws and regulations; illegally acquiring data generated in China and conducting data processing activities that exclude or restrict competition; and illegally exporting products, technologies, or data originating in China to third countries. In addition, foreign internet platform operators are also required to take necessary measures if they are aware of the above illegal practices of operators within their platforms.

CAC Releases Report on China’s Digital Development in 2022

[Read the Chinese version here](#)

On May 23, 2023, the Cyberspace Administration of China (CAC) released the “Digital China Development Report (2022),” highlighting the significant achievements in constructing a digital

China in 2022. The report emphasized that the digital economy has become a crucial engine for stable growth and transformation in the country.

According to the report, China's digital economy reached a scale of RMB 50.2 trillion, ranking second in the world and accounting for 41.5% of China's GDP, with a nominal year-on-year growth rate of 10.3%. The scale and capacity of digital infrastructure has increased significantly. By the end of 2022, 2.312 million 5G base stations had been built and put into operation in China, with 561 million 5G users, accounting for over 60% of all users worldwide. The total scale of standard data center racks in China exceeds 6.5 million, with an average annual growth rate of over 30% in the past five years. The computing power of data centers exceeds 180 EFLOPS, ranking second in the world. The scale of data resources witnessed rapid growth as well. China's data production reached 8.1 ZB in 2022, increasing 22.7% year-on-year and ranking second in the world with a global share of 10.5%.

The continuous improvement of China's innovation capabilities in digital technology was evident. In 2022, China filed nearly 32,000 Patent Cooperation Treaty (PCT) applications in the field of information technology, accounting for 37% globally, and the number of granted invention patents in core industries in the digital economy reached 335,000, with a year-on-year increase of 17.5%.

The report also provided an outlook on the development situation of a digital China in 2023, taking 2023 as the starting year for the full implementation of the "Overall Layout Plan for the Construction of Digital China."

Industry Updates

HIPI Pharma Wins API Monopoly Appeal Case

[Read the Chinese version here](#)

On May 25, 2023, the Supreme People's Court (SPC) issued its final decision in the *Yangtze River Pharmaceutical Group v. HIPI Pharma Tech* appeal case (The Brattle Group worked on behalf of the latter in this case). The SPC overturned the lower court's decision, finding that the defendant in the first instance, HIPI Pharma, did not engage in abuse of dominance and had legitimate reasons for its pricing scheme, exclusive dealing, and other alleged business conducts.

HIPI Pharma is a Chinese active pharmaceutical ingredient (API) supplier, while Yangtze River Pharmaceutical Group (Yangtze Pharma) is a leading Chinese pharmaceutical enterprise. HIPI Pharma supplied Yangtze Pharma with its self-developed patented API, desloratadine citrate disodium (DCD), which Yangtze Pharma used to produce its Beixue antihistamine tablets for treating allergies. In 2019, Yangtze Pharma alleged that HIPI Pharma had abused its dominant position in the DCD API market through conduct including exclusive dealing, excessive pricing, tying, and imposing unreasonable trade conditions. In the first instance, the Nanjing Intermediate People's Court ruled in favor of the plaintiff, requesting HIPI Pharma to pay the plaintiff RMB 68.3 million in damages.

Upon appeal, the SPC overturned the first-instance judgment based on a comprehensive analysis of the relevant market, market dominance, abusive conduct, and competition effects. First, the SPC held that HIPI Pharma's market power endured indirect competitive restraints from the downstream market. Yangtze Pharma's Beixue tablets compete with other second-generation antihistamines downstream. Since Yangtze Pharma is the only external customer of HIPI Pharma, the competition from downstream second-generation antihistamines exerts an indirect competitive restraint on the upstream HIPI Pharma, weakening HIPI Pharma's market power.

Second, the SPC found that the alleged exclusive dealing was a legitimate exercise of the plaintiff's patent rights, as opposed to the abusive conduct prohibited by the Anti-Monopoly Law. Third, the SPC held that the sales price set by HIPI Pharma did not constitute excessive pricing through a comprehensive analysis of the internal rate of return, a comparison of the price and economic value of the API in question, and an assessment of competition effects and consumer welfare. The SPC concluded that HIPI Pharma did not engage in abusive conduct, overturning the first-instance judgment and dismissing the plaintiffs' claims.

NetEase Wins Game Infringement Lawsuit Against Alibaba

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On May 23, 2023, NetEase Games and Alibaba's subsidiary Lingxi Games released statements disclosing the results of the first-instance judgment of their copyright lawsuit. The Guangzhou Internet Court ruled that the videogame *Romance of the Three Kingdoms: Strategy Edition*, developed by Lingxi Games, infringed the copyright of NetEase Games' *Immortal Conquest*; Lingxi Games was thus required to amend the infringing content and pay RMB 50 million in compensation to NetEase.

NetEase claimed that *Romance of the Three Kingdoms* bears significant similarities to *Immortal Conquest* in terms of story background, game interface, design, effects, and visuals, which not only infringes *Immortal Conquest's* copyright but also leads to a lack of clear distinction between the two games, hence reducing the competitive advantage and player retention of *Immortal Conquest*. Alibaba's Lingxi Games countered that *Romance of the Three Kingdoms* has unique game rules and an overall different game structure from *Immortal Conquest*.

The Guangzhou Internet Court concluded that *Romance of the Three Kingdoms* is an adaptation of *Immortal Conquest* with similarities in certain game mechanisms, leading to a similar gaming experience for players. The court ruled that Lingxi Games had infringed NetEase Games' copyright and was liable to amend the infringing content and compensate NetEase Games RMB 50 million, but rejected NetEase's request to cease the operation of *Romance of the Three Kingdoms*. Lingxi Games plans to file an appeal against the first-instance judgment.

Judgment Handed Down in First Infringement Case Involving Digital Human

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The Hangzhou Internet Court recently issued the first-instance judgment on the first infringement case involving a "digital human." The court determined that the conduct of the defendant, a Hangzhou-based internet company, constituted copyright infringement and unfair competition. The court ruled that the defendant should bear legal responsibility by eliminating the impact and compensating the plaintiff, Mofa Information Technology Co., Ltd., RMB 120,000.

Mofa Information Technology Co., Ltd. (Mofa) utilized various AI technologies to create a hyper-realistic digital human called "Ada," which was publicly unveiled in October 2019. In July 2022, the defendant released two videos on the Douyin platform in which the defendant used Mofa's video content of Ada and added marketing information about the defendant's digital human courses to the videos. Mofa filed a lawsuit claiming that the defendant's conduct infringed the information

network dissemination rights of Mofa’s relevant artworks and audiovisual works, as well as the information network dissemination rights of the video producers and performers. Such conduct also constituted unfair competition by false publicity. The defendant countered that Mofa did not enjoy the copyright for the videos and the digital human at issue, and that the defendant did not profit from the videos.

The court held that the digital human is a combination of a specific application of AI technology and a variety of other technological fields. It is only a tool for creators and does not qualify as an author. The performance of a digital human is essentially a digital projection of human performance, and therefore the digital human itself cannot be considered a “performer,” meaning the digital human itself does not enjoy copyright or neighboring copyright protection under the existing framework of copyright law in China.

However, the image of the digital body of Ada constitutes an artistic work, and the video using the image of Ada constitutes an audiovisual work, both of which fall under the scope of protection of copyright law. Considering this, the court found that the defendant’s conduct infringed on Mofa’s information network dissemination rights. In addition, the defendant’s use of Ada-related images to advertise its courses on the Douyin platform harmed Mofa’s business interests and constituted unfair competition by false advertising.

This judgment defines for the first time the copyright or neighboring rights of multiple parties involved in the process of creating and using a digital human, including the digital human itself, its creators, and operators. The judgment also clarifies the attribution of the performer’s rights involving the digital human and highlights the value of legal protection for intellectual property rights in creating and operating a digital human.

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