

China Competition Policy, IP & Digital Economy

MONTHLY UPDATE

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Meetings/Seminars/Projects

China-UK Digital Economy Innovation and Development Forum Held in Wuxi

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On June 9, 2023, the China-UK Digital Economy Innovation and Development Forum was successfully held in Wuxi City, Jiangsu Province, with more than 180 representatives from China and the UK in attendance. As an important event in implementing the “Joint Statement of the 10th China-UK Economic and Financial Dialogue,” the Forum was co-hosted by the Center for International Economic and Technological Cooperation of the Ministry of Industry and Information Technology (MIIT), the China-Britain Business Council (CBBC), and the Wuxi Municipal People’s Government, as well as supported by the Embassy of the United Kingdom in China. Kai Zheng, Level-II Counsel of the Department of International Cooperation at MIIT; Li Xikai, Deputy Director of the International Economic and Technical Cooperation Center at MIIT; Tom Duke, Deputy UK Trade Commissioner to China; and several other officials from MIIT, CBBC, and Wuxi People’s Government attended the Forum and delivered speeches.

Some of the notable remarks included:

- Kai Zheng stated that strengthening the digital economy cooperation between China and the UK will provide new momentum for industrial cooperation between China and the UK, and made suggestions on how to deepen the cooperation.
- Tom Duke commended the timeliness and significance of the Forum, noting that the digital economy – as one of the key topics at the first UK-China Industrial Cooperation Dialogue in June 2022 – will continue to be the focus of cooperation between the UK and China.
- Li Xikai pointed out that British companies are actively participating in the construction of China's digital economy at present. Earlier this year, two digital economy cooperation projects were selected as the first batch of China-UK modern industrial cooperation demonstration projects.

During the Forum, the China-UK Digital Economy Cooperation Group was officially launched. The Forum also included activities such as the "China-UK Digital Industry Cooperation Symposium" and the "China-UK Digital Economy Industry Survey" to build a platform for promoting industrial docking and cooperation between the two countries and jointly promoting industrial innovations.

Antitrust Administrative Guidance Meeting for Pharmaceutical Industry Held by SAMR

[Read the Chinese version here](#)

On June 15, 2023, the State Administration for Market Regulation (SAMR) held an anti-monopoly administrative guidance meeting for the pharmaceutical industry. Meeting attendees included representatives from the China Chemical and Pharmaceutical Industry Association, the China Drug Regulatory and Administration Research Society, and several companies involved in active pharmaceutical ingredient (API) and pharmaceutical preparations.

In the meeting, SAMR noted that Chinese pharmaceutical companies have long been adhering to innovative and high-quality development, as well as facilitating the building of the health sector in China. Meanwhile, monopolistic practices in the pharmaceutical sector are still prevalent, revealing the weaknesses and risks of antitrust compliance in the pharmaceutical industry. To address this issue, SAMR has been targeting pharmaceuticals as an antitrust enforcement priority area, as well as fostering greater coordination between competition regulation and industry regulation.

SAMR has required pharmaceutical companies to conduct a comprehensive self-examination, as well as an effective rectification if any problem is detected. It also underscored the importance of compliance management. SAMR said that it would continue to strengthen anti-monopoly supervision and law enforcement in the pharmaceutical industry, strictly handle monopolistic practices following the law, and promote the timely resolution of potential problems, to effectively safeguard the market competition order as well as the interests of consumers and the public.

China Antitrust Enforcement Annual Report (2022) Released

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On June 9, 2023, SAMR released the “China Antitrust Enforcement Annual Report (2022).” In 2022, China’s antitrust enforcement agencies prioritized both regulatory compliance and development promotion. They focused on strengthening the regulation of antitrust agreements, expanding enforcement areas, and protecting market fairness. 2022 saw the first revision of the Anti-Monopoly Law (AML) in 15 years since its enactment, and the successful aftermath of the development of the AML’s supporting regulations.

Important achievements in antitrust enforcement are outlined here. Throughout the year, 18 new cases involving antitrust agreements were investigated, of which 16 were concluded, resulting in fines totaling RMB 569 million. Of the 16 cases concluded, 11 involved horizontal monopoly agreements, 4 involved vertical monopoly agreements, and 1 involved both horizontal and vertical monopoly agreements. Key industries involved were pharmaceuticals, education, construction materials, and vehicle testing.

Regarding abuse of dominant market position, 13 cases were investigated in 2022, resulting in fines totaling RMB 166 million. Public utilities and internet platforms were among the sectors targeted. The cases encompassed various types of abusive behavior, such as tying, unreasonable conditions, unfairly high pricing, and discriminatory treatment. Penalties were imposed on 14 enterprises, with fines ranging from millions to tens of millions of RMB.

For concentrations of undertakings, 867 notifications were received, and 794 cases were concluded, covering industries like cloud computing and digital media. Throughout the year, five cases were approved with restrictive conditions, and two cases were abandoned due to the parties’ inability to address the competition concerns.

In addition, in 2022, China’s antitrust regulators have carried out specialized enforcement actions to stop the abuse of administrative power to exclude or restrict competition, investigating 92 cases and concluding 73 cases in total. This is a 59% increase compared to the previous year.

SAMR Seeks Comments on Draft Antitrust Compliance Guidelines for Concentration of Undertakings

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On June 19, 2023, SAMR released the draft “Antitrust Compliance Guidelines for Concentration of Undertakings” for public comments. The guidelines consist of seven chapters on general provisions; notification of concentration of undertakings; review of concentration of undertakings; supervision; and enforcement of restrictive conditions, investigation of the unlawful implementation of concentration of undertakings, legal liabilities, and by-laws.

This is a comprehensive revision of the existing provisions on the review of concentrations of undertakings under the newly revised AML, mainly including the following aspects:

- **The Stop-the-Clock system**
The guidelines provide detailed rules for the three circumstances in which a suspension of the fixed timeline of review procedures can occur.
- **Review and investigation of concentrations of undertakings that do not meet the threshold for notification**
The AML stipulates that if the concentration of undertakings does not meet the notification threshold, but there is evidence that it has or may have the effect of excluding or restricting competition, SAMR can require the undertakings to notify this concentration. The guidelines make clear supporting provisions for this.
- **Investigations of illegal concentrations of undertakings**
The guidelines clarify the relevant concept and stipulate the obligation of third parties to cooperate with the investigation.
- **Enhancing the review quality and efficiency**
In particular, the guidelines expand on remedies by including data divestiture in the structural remedies and modifications of the platform's rules or algorithms, as well as not decreasing interoperability in the behavioral remedies.

Revised Provisions on Prohibiting the Abuse of Intellectual Property Rights Issued by SAMR

[Read the Chinese version here](#)

On June 29, 2023, SAMR revised the “Provisions on Prohibiting the Abuse of Intellectual Property Rights to Exclude or Restrict Competition,” which will officially take effect on August 1, 2023. Compared to the 2015 version, the revised provisions have made the following improvements.

First, the revised provisions expand the scope of abuse of intellectual property rights (IPR) to exclude or restrict competition, including three types of monopolistic behavior implemented through the exercise of IPR: monopoly agreements, abuse of dominant market position, and the implementation of concentrations that may have the effect of excluding or restricting competition.

Second, the revised provisions refine the rules for determining monopolistic behavior through the exercise of IPR. This includes defining the relevant market, determining the dominant market position, identifying relevant monopolistic behaviors, considering important factors in the relevant merger review, and determining remedies for the concentration of undertakings.

Third, the revised provisions enhance the regulation of typical and specific monopolistic behaviors in the field of intellectual property. For example, the provisions improve patent pool regulations, prohibiting patent pool entities and members from engaging in monopolistic behavior.

SAMR Releases Anti-Monopoly Guidelines in the Field of SEPs for Public Comments

[Read the Chinese version here](#)

On June 30, 2023, SAMR issued the draft “Anti-Monopoly Guidelines in the Field of Standard Essential Patents (SEPs)” for public comments. These guidelines provide corresponding compliance suggestions to prevent and stop operators from abusing SEPs to restrict competition, and to protect fair competition in the market and the general interests of the public.

The guidelines consist of four chapters: General Provisions, Monopoly Agreements Involving SEPs, Abuse of Dominant Market Position Involving SEPs, and Concentrations of Undertakings Involving SEPs. The General Provisions provides comprehensive guidance on antitrust enforcement concerning SEPs on multiple fronts, including the definition of relevant markets involving SEPs, information disclosure in standard settings, FRAND commitments, and good faith negotiations. Below are some highlights of the guidelines.

FRAND Commitments

The guidelines explicitly address the significance of the principles of fairness, reasonableness, and non-discrimination (FRAND) in licensing negotiations between SEP owners and SEP implementers. Article 6 of the guidelines provides that whether the patentee or assignee have violated the FRAND commitments could serve as an important consideration when determining monopolistic conduct.

Determination of market dominance involving SEPs

Article 11 of the guidelines states that SEP owners virtually have 100% market share in the market for the licensing of SEPs they hold, which grants them a dominant market position. Meanwhile, the guidelines also provide a range of other considerations, including the ability of the SEP owner to control the relevant market, the degree of dependence of downstream participants, the difficulty of entering the licensing market, and the financial and technical conditions of the SEP owner.

Abuse of dominance

Articles 12 to 16 of the guidelines enumerate the considerations for analyzing abusive conduct involving SEPs, including excessive pricing, refusals to deal, tying, attaching unreasonable conditions to transactions, and discriminatory treatment. The detailed considerations for each of these abuses are different, but whether the parties have negotiated in good faith is a significant consideration for all of them. For example, when determining whether an SEP owner has charged unfairly high royalties, the factors to be considered include good faith negotiation, historical royalties, expired or invalid patents, quantitative and qualitative changes in the SEP portfolio, and the presence of double charging through a non-practicing entity (NPE).

The guidelines also recognize the legitimacy of tying by the patent owner, pointing out that tying can reduce overall transaction costs and enhance the efficiency of standard implementation.

Concentrations of undertakings

Article 18 of the guidelines provides that concentrations involving SEPs should be analyzed according to the Anti-monopoly Guidelines in the Field of Intellectual Property Rights and other relevant antitrust regulations. Meanwhile, consideration may also be given to whether the SEP constitutes an independent business or yields an independent and calculable turnover, as well as to the type, form, and duration of the license.

SAMR Releases 13 Typical Anti-Monopoly Enforcement Cases

[Read the Chinese version here](#)

On June 2, 2023, SAMR released the first list of typical cases of 2023 antitrust enforcement actions in the livelihood sector, including 13 cases covering key areas such as pharmaceuticals and public utilities.

Of these cases, five were related to the pharmaceutical industry and eight to the utilities and insurance industries. In addition to companies, two administrative units have been subject to antitrust investigations by regulators for allegedly abusing their administrative powers to exclude or restrict competition. These actions serve as significant policy guidelines and are expected to have a positive impact on anti-monopoly enforcement efforts, aligning political, legal, and social outcomes.

The focus on consumer welfare in sectors like pharmaceuticals and public utilities reflects the commitment to placing people at the center of development. By effectively preventing and remedying anticompetitive behavior, the enforcement of the AML safeguards consumer interests, fosters competition, and contributes to the establishment of a unified national market. The recent targeted enforcement actions demonstrate a strategic approach to allocating enforcement resources, emphasizing key industries and prevalent forms of monopolistic conduct in the public welfare domain.

Huaneng Penalized for Abuse of Dominance by Shandong AMR

[Read the Chinese version here](#)

On June 2, 2023, SAMR also published the administrative penalty decision by the Shandong Administration for Market Regulation (Shandong AMR) against Huaneng Rizhao Thermal Power Co., Ltd (Huaneng) for engaging in abusive conduct.

The investigation was initiated by the Shandong AMR in August 2020. The relevant market is defined as the market for urban public pipeline network heating services in the main urban area of Rizhao City, Shandong Province, in which Huaneng has a dominant market position. Since 2019, Huaneng has required development and construction units to exclusively procure and install heat metering devices provided by Huaneng. By imposing this restriction, Huaneng effectively eliminated competition in the sale of heat metering devices, undermining market fairness.

In addition, Huaneng Rizhao implemented discriminatory treatment in heating charges for enterprises and institutions. While it initially charged heat consumers based on metered usage, it later switched to charging based on the area of space heated. This change in pricing method was

applied selectively to certain enterprises and institutions without proper justification. The affected entities were subjected to higher costs, unnecessary energy consumption, and resource wastage.

In April 2023, the Shandong AMR issued an administrative penalty decision against Huaneng for abusing its market dominance. The company was fined an amount equal to 1% of its 2019 sales revenue, totaling RMB 4.26 million.

Zhongran Fined for Abuse of Dominance by Nanjing AMR

[Read the Chinese version here](#)

On June 2, 2023, SAMR published the administrative penalty decision by the Nanjing Administration for Market Regulation (Nanjing AMR) against Nanjing Zhongran Urban Gas Development Co., Ltd (Zhongran) for abusing its dominant market position.

The relevant market is defined as the market for piped gas supply services in the Jiangbei area of Nanjing, in which Zhongran has a dominant market position. Per the investigation, Zhongran engaged in the abusive behavior of tying sales of value-added products for developers of new residential areas since 2016, as well as charging unreasonable engineering installation fees for developers and non-residential users. These actions were determined to exclude or restrict market competition.

In January 2023, the Nanjing AMR issued an administrative penalty decision on Zhongran. The company was ordered to cease its illegal activities, forfeit the illegal gains amounting to RMB 29.56 million, and pay a fine of 2% of its annual sales revenue, totaling RMB 50.4 million.

Eight Insurance Companies in Chongqing Fined for Monopoly Agreement

[Read the Chinese version here](#)

On June 19, 2023, SAMR published the administrative penalty decision by the Chongqing Administration for Market Regulation (Chongqing AMR) against eight insurance companies in Ba'nán District, Chongqing City.

The Chongqing AMR initiated an investigation in June 2017 into the alleged monopoly agreement by the branches in the Ba'nán district of Chongqing of eight large insurance companies: People's Insurance Company (Group) of China Limited; China Life Insurance (Group) Co., Ltd.; Sunshine Property Insurance Co., Ltd.; China Life Property and Casualty Insurance Co., Ltd.; China Pacific

Property Insurance Co., Ltd.; China Pacific Life Insurance Company Limited; China United Property Insurance Co., Ltd.; and Ping An Annuity Insurance Company of China Limited.

The investigation revealed that these companies had divided the market for Student Safety Insurance (a commercial insurance policy developed for school students and young children) in Ba'nian District, restricting the entry of other insurance companies and fixing price and premium coverage of the Student Safety Insurance, in violation of the AML.

In March 2023, the Chongqing AMR levied penalties on the eight companies, ordering them to cease their illegal behavior, confiscating their illegal income totaling RMB 5.94 million, and imposing fines of 1% of their 2016 annual sales totaling RMB 5.57 million.

Baize Digital Copyright Protection Platform Launched in Beijing

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On June 28, 2023, the 2023 China Emerging Industries (Beijing) Summit, hosted by People's Daily Online, was held in Beijing, where the official launch of the Baize Digital Copyright Protection Platform was announced.

The launch of the Baize platform aims to promote the integration and symbiosis of new-generation artificial intelligence technologies and the digital copyright industry in the following three aspects:

1. The establishment of a digital audiovisual copyright data center to support the inheritance of traditional culture through the operation and protection of digital copyrights.
2. The creation of a digital audiovisual copyright monitoring platform that contributes new ideas and opens new horizons for the operation and protection of digital copyrights.
3. The organization of seminars on the protection of digital audiovisual IPR, promoting the establishment of a harmonious and symbiotic digital audiovisual ecosystem.

In the face of emerging copyright issues in the digital economy, the Baize Digital Copyright Protection Platform aims to achieve effective understanding, identification, and analysis of digital content, enhancing the operational efficiency and protection capability of digital copyright. Therefore, the launch of the Baize Digital Copyright Protection Platform will likely have profound significance for the development of the digital audiovisual industry in China.

Industry Updates

SAMR Lifts the Restrictive Conditions on Marubeni's Acquisition of Gavilon's Equity

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On June 25, 2023, SAMR announced the lifting of the restrictive conditions for the acquisition by Marubeni Corporation (Marubeni) of 100% equity of Gavilon Holdings (Gavilon), which has been operating for 10 years.

On April 22, 2013, China's Ministry of Commerce approved Marubeni's acquisition of Gavilon's 100% equity with additional restrictive conditions. Under these obligations, Marubeni and Gavilon were required to conduct the hold-separate remedy in the deal. This included establishing two independent legal entities – Marubeni's soybean subsidiary and Gavilon's soybean subsidiary – to operate the China soybean import and distribution business separately.

These two legal entities had to stay separate and independent regarding human resources, procurement, marketing, distribution, pricing, etc. Also, Marubeni's soybean subsidiary and Gavilon's US assets needed to be kept at arm's length. Marubeni's soybean subsidiary was prohibited from purchasing soybeans from Gavilon's US assets, except under fair market conditions. Additionally, the exchange of competitive information between Marubeni's and Gavilon's soybean subsidiaries was prohibited. Marubeni was obliged to appoint an independent trustee to supervise the fulfillment of these obligations and provide regular reports every six months to the Ministry of Commerce and the appointed trustee.

In October 2022, Marubeni filed to lift the restrictive conditions, on the grounds that it had sold all of Gavilon's grain and ingredient businesses, including the soybean business. After a thorough assessment of the performance of obligations by the parties, SAMR found no evidence of non-compliance and concluded that Marubeni had fulfilled all of its obligations during the implementation period.

SAMR also assessed the impact of lifting restrictive conditions on market competition. It was found that on January 26, 2022, Viterra Limited signed an agreement with Marubeni to acquire all of the shares of Gavilon Agricultural Investments Ltd. After the completion of the transaction, Viterra became the sole controller of Gavilon's soybean business, and there was no affiliation between Viterra and Marubeni. Given that the previously imposed restrictive conditions were no longer necessary following this significant change, SAMR decided to remove the restrictive conditions.

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