

China Antitrust Update (Jan–Feb, 2023)

Author: QIAN, Xiaoqiang LIN, Xixiang YANG, Yikai WANG, Danlin WANG Ning

From January to February 2023^[1], in the legislation and policy-making area, the State Administration for Market Regulation (the “SAMR”) released the market supervision work data of 2022 and held a series of work meetings in review of the law enforcement practice in 2022 and to deploy work priorities in 2023. In the law enforcement area the SAMR unconditionally approved 116 merger cases in January and February 2023, involving sectors of Internet, energy, chemical, transportation, medicine, automobile, materials, environmental protection, food, real estate, private equity, etc. The SAMR announced the decisions of Administrative Penalty on Monopoly Agreement reached and implemented by Huangshan City Huangshan District Taiping Lake Cruise Development Co., Ltd., and the Administrative Penalty on Abuse of Market Dominance of Chongqing Yongkang Gas Co., Ltd. and Northeast Pharmaceutical Group Co., Ltd. In the judicial area the Supreme People’s Court (the “SPC”) clarified in its judgments the factors for determining “other concerted conducts” and the principle in identifying “the previous year” when calculating the previous year’s turnover; elaborated the principles of allocation of burden of proof, identification of obliged party and determination of the amount of compensation in subsequent civil action following vertical pricing restraints; and decided for the first time that a real estate agency had market dominance. The Shanghai Pudong New Area People’s Court published a judgment on China’s first unfair competition case regarding commercial online game leveling service.

Legislation and Policy Area

On January 3, 2023, the SAMR held the Symposium on the Pilot

Program to Delegate the Power to Conduct Merger Review[2] (the “**Symposium**”). The Symposium summarized the achievements and experience of the pilot program, addressing that since the launch of the pilot work on August 1, 2022, the SAMR has delegated 135 merger cases to provincial and municipal bureaus for review, accounting for 32.7% of the total number of notified cases in the same period, with an average review time of 17.8 days, which is broadly in line with the practice of the SAMR. The symposium also proposed to further improve the mechanism of the pilot program and promote the merger review practice to better serve the high-quality development of the economy.

On January 14, 2023, the SAMR announced the market supervision work data of 2022[3]. In 2022, the law enforcement authorities have handled 73 cases of abuse of administrative power to exclude or restrict competition, 149 cases[4] of monopoly conducts, cleared 794 merger cases, announced administrative penalties on 32 cases of failure to notify, and handled 7,874 cases of unfair competition.

On February 9, 2023, the National Market Supervision System Anti-Monopoly Work Conference and the Anti-Monopoly Law Enforcement Special Action Deployment Meeting in the People’s Livelihood Field[5] (the “**Meeting**”) were held. As stressed in the Meeting, “emphasizing politics, strengthening supervision, promoting development and ensuring security” will be the overall work roadmap, with focuses on five aspects of work: first, to anchor a large market target and eliminate local protectionism and administrative monopoly; second, to better support the construction of a great country with upgraded service quality and sophisticated intellectual property, focus on improving the vitality and quality of market competition, strengthen the “normalized supervision” of the platform economy, promote antitrust law enforcement in the key areas of people’s livelihood, improve the merger review of key areas, and explore to deepen the antitrust supervision in the field of intellectual property; third, to secure

the rule of law regulation, credit regulation and “smart” regulation, and concentrate on improving the efficiency of antitrust supervision and law enforcement; fourth, to maintain the security baseline of development, strengthen the competition assessment in key sectors and fields, and enhance the connected effect of two types of resources in both domestic and global markets; fifth, to build a multi-governance dynamic and promote the overall collaboration of fair competition governance.

*寇梅若律师就本文亦有贡献

[1] Relevant information is as of February 28, 2023 and is calculated on the date when the case was closed. The “February” hereafter shall mean “as of February 28, 2023”.

[2] For more details, please see https://www.samr.gov.cn/fldes/sjdt/gzdt/202301/t20230104_352672.html

[3] For more details, please see <https://mp.weixin.qq.com/s/xXy4Y5EQk1Q1nebOLqsexg>

[4] As stressed in the National Market Supervision System Anti-Monopoly Work Conference and the Anti-Monopoly Law Enforcement Special Action Deployment Meeting in the People’s Livelihood Field, 187 monopoly cases were cleared in 2022, with the total amount of administrative penalties and confiscation of RMB 784 million.

[5] For more details, please see https://www.samr.gov.cn/xw/zj/202302/t20230209_353198.html; https://www.samr.gov.cn/xw/tp/202302/t20230209_353199.html

[6] For more details, please see SPC(2022) Zui Gao Fa Zhi Xing Zhong No.29 Civil Ruling.

[7] For more details, please see <https://mp.weixin.qq.com/s/ro4UtSVVoJikylcAolt0EA>

[8] For more details, please see <https://mp.weixin.qq.com/s/m9L9AbzouAsSu6Ia1o58ZQ>

[9] For more details, please see (2022) Hu 0115 Min Chu No.13290 Civil Ruling.

[10] Article 12 of the Anti-Unfair Competition Law: A business operator that makes use of the network to engage in production and business activities shall abide by all the provisions herein. It shall not perform any of the following acts that impede or disrupt the normal operation of network products or services legally provided by other business operators, by taking advantage of technical means to influence users' choices or otherwise, (1) inserting a link into a network product or service legally provided by another operator to compel a destination jump without the approval of such operator; (2) misleading, deceiving or compelling users into modifying, closing, or uninstalling a network product or service legally provided by another business operator; (3) implementing in bad faith an incompatibility with a network product or service legally provided by another business operator; or (4) any other act that impedes or disrupts the normal operation of network products or services legally provided by another business operator.

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