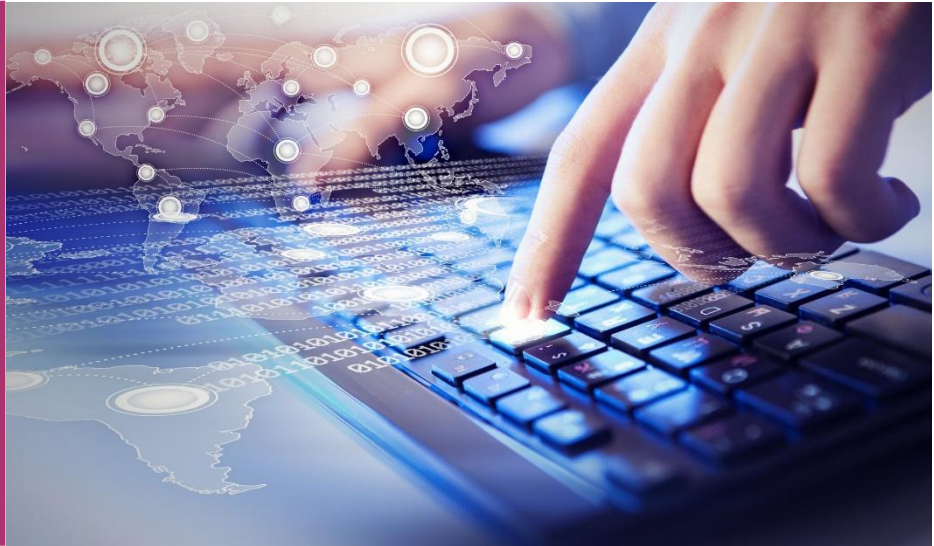


**Competition**

**Newsletter**

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## **[Regulations]**

### **SAMR penalizes Zhejiang Construction Investment Group for failure to submit a centralized operator declaration**

On September 3, 2020, the State Administration of Market Supervision (“SAMR”) issued an administrative penalty decision against Zhejiang Provincial Construction Investment Group Co. (“Zhejiang”). This penalty was in response to Zhejiang’s failure to file a declaration relating to its acquisition of a 29.83% equity interest in Duoyi Group Co. (“Duoyi”). The SAMR had opened an investigation into the case on March 3, 2020.

SAMR found that Zhejiang’s acquisition of a 29.83% equity interest in Duoyi amounts to a controlling interest, making the acquisition a concentration of operators per Article 20 of the *Anti-Monopoly Law*. Moreover, Zhejiang and Duoyi’s 2018 turnover reached the reporting standard set out in Article 3 of the State Council’s *Provisions on the Reporting Criteria for Operator Concentration*, which is a situation that should be noticed. On May 10, 2019, Zhejiang completed the registration of the transfer of shares, and did not report to the bureau before then. This constitutes

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an unreported operator concentration, in violation of Article 21 of the *Anti-Monopoly Law*.

As the concentration would not have the effect of excluding or restricting competition, the State Administration of Market Supervision decided to impose an administrative penalty of RMB 350,000 on Zhejiang.

Source: State Administration for Market Regulation website

For details of the penalty decision, see:

[http://www.samr.gov.cn/fldj/tzgg/xzcf/202010/t20201014\\_322326.html](http://www.samr.gov.cn/fldj/tzgg/xzcf/202010/t20201014_322326.html)

### **SAMR punishes 11 used car market operators in Shizuishan, Ningxia, for monopoly agreements**

On October 22, 2020, SAMR issued an administrative penalty decision against 11 used car market operators in Shizuishan, Ningxia after uncovering monopoly agreements among them. The Ningxia Hui Autonomous Region's Department of Market Supervision and Administration opened an investigation into the case from August 8, 2019, and issued an administrative penalty decision on October 14, 2020, against the 11 parties in the case.

It was found that between September 2009 and June 2019, 10 of the operators mentioned above verbally colluded to fix the prices of used car trading services, appraisal services, and also agreed to equal distribute profits from this arrangement (the “Monopoly Agreement”). The 11<sup>th</sup> party, Zhongli, joined the Monopoly Agreement from January 2018 to June 2019 (the 11 parties, together, forming the “Monopolists”). In implementing the Monopoly Agreement, a local trade association played a role in organizing the implementation of the monopoly agreement and restricting competition in two main ways: first, it organized a meeting at the beginning of each month to declare the previous month's revenues and expenditures, and allocate sales profits accordingly. Second, from July 2010 to March 2019, it was required to affix a designated stamp to the transfer registration of the "unified invoice for used car sales" (retained by the DMV).

Accordingly, on October 14, 2020, the Department of Market Supervision and Administration issued administrative penalty decisions against the Monopolists. Among them: the Monopolists, with the exception of Zhongli, were ordered to cease their

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anti-competitive conduct, were made to disgorge their illegal income of 117352.64 yuan, and were imposed a fine of 15443.89 yuan (4% of the previous year's sales), together totaling 1327965.3 yuan. For its part, Zhongli was exempt from confiscation of its illegal income and fines. This exemption was due to its active role in providing important evidence of profit distribution among the Monopolists. and for the implementation of illegal acts with forced circumstances, reflected to the relevant departments of Shizuishan used car trading market monopoly business problems, active Provided important evidence of profit distribution and complied with the relevant provisions of the Anti-Monopoly Law on exemption from administrative penalties by imposing administrative penalties to order the cessation of unlawful conduct and to exempt it.

Source: State Administration for Market Regulation website

For details of the penalty decision, see:

[http://www.samr.gov.cn/fldj/tzgg/xzcf/202010/t20201022\\_322556.html](http://www.samr.gov.cn/fldj/tzgg/xzcf/202010/t20201022_322556.html)

**Shandong Provincial Market**

**Supervision Bureau corrects  
Rongcheng City Marine  
Development Bureau's  
anti-competitive administrative  
insurance requirement**

On May 14, 2020, on the basis of relevant investigation, the Shandong Province Market Supervision Bureau (“Shandong MSB”) opened an investigation into the Rongcheng City Marine Development Bureau (“Rongcheng CMDB”) for abusing its administrative power by excluding and restricting competition.

The investigation uncovered that since the beginning of 2020, the Rongcheng CMDB required vessel owners to purchase employer's liability insurance for fishing vessels from the Rongcheng office of the Shandong Provincial Fisheries Mutual Insurance Association (“Shandong FMIA”). This requirement was imposed during the annual review of fishing licenses, when the relevant documents related to 2018–2019 production safety liability insurance in Shandong Province expired, and the higher authorities had not yet issued documents of a designated nature. Refusal to purchase insurance from the Shandong FMIA would result in denial of an annual audit. Due to this requirement by the **October 2020**  
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Rongcheng CMDB, local insurance companies in Rongcheng City with same business scope, qualifications, and underwriting capacity as the Shandong FMIA were unable to participate in this market and were prejudiced as a result.

The Shandong MSB held that the Rongcheng CMDB should carry out its mandate in accordance with the law and regulations. As an administrative authority, the Rongcheng CMDB's scope of responsibility includes fishing vessel inspection, and it must fulfill its mandate in compliance with the law. Without statutory, regulatory, or policy support, it made the purchase of FMIA insurance a prerequisite for the annual examination and approval of fishing permits, thereby restricting competition from other similar operators and undermining the competitive order of the local insurance market.

During the investigation, the Rongcheng CMDB submitted a Rectification Report, and reversed its requirement for the purchase of safety production liability insurance from the Shandong FMIA.

Considering that the parties had taken active steps to ensure compliance with the relevant laws and ceased the anti-competitive actions at issue, the

Shandong MSB closed its investigation into this case.

Source: State Administration for Market Regulation website

For details of the penalty decision, see:

[http://amr.shandong.gov.cn/art/2020/9/28/art\\_93584\\_9825843.html](http://amr.shandong.gov.cn/art/2020/9/28/art_93584_9825843.html)

### **SAMR grants unconditional approval to 25 operator concentrations in October**

Between September 28 and October 25, 2020, SAMR unconditionally approved a total of 25 operator concentrations, mainly in the petrochemical, investment, iron and steel, new energy, and automotive industries, among others.

Source: State Administration for Market Regulation website:

[http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202010/t20201013\\_322279.html](http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202010/t20201013_322279.html)

[http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202010/t20201020\\_322451.html](http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202010/t20201020_322451.html)

[http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202010/t20201027\\_322665.html](http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202010/t20201027_322665.html)

**SAMR issues Antimonopoly October 2020**  
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### **Guidelines on the APIs Sector (Draft for Comment)**

In order to stop and prevent monopolistic behavior in the field of active pharmaceutical ingredients (“APIs”) and to guide operators in the field of APIs to operate in compliance with the law. On October 13, SAMR released the *Antimonopoly Guidelines on the APIs Sector (Draft for Comment)*, for public comment.

The Guidelines, which consist of six chapters and 22 articles, provide detailed definitions and regulations on what constitutes a monopoly law violation in the field of APIs, and aim to guide producers and operators towards compliance with the *Anti-Monopoly Law*. This document builds on the National Development and Reform Commission (“NDRC”)’s 2017 *Guidelines for the Pricing Behavior of drug Dealers in Short Supply Drugs and APIs*, for APIs’ production and sales enterprises.

Source: State Administration for Market Regulation website:

[http://www.samr.gov.cn/hd/zjdc/202010/t20201013\\_322278.html](http://www.samr.gov.cn/hd/zjdc/202010/t20201013_322278.html)

**SAMR formally issues the Interim Regulations on the Review of**

### *Concentration of Business Operators*

On October, 2020, the State Administration of Market Supervision promulgated the *Interim Regulations on the Review of Concentration of Business Operators* (the “Interim Regulation”). The Interim Regulations, which consist of 65 articles, are designed to standardize the enforcement and examination of concentrated operators, and to promote compliance among market entities.

The review of the concentration of business operators is an important part of the *Anti-Monopoly Law*. It is reported that the Interim Regulation is based on the *Anti-Monopoly Law*, the *Administrative Licensing Law*, the *Administrative Penalty Law* and other Laws. The Interim Regulation also integrates four departmental regulations and two normative documents, such as the *Measures for the Notification of*

### *Concentration of Business Operators.*

Moreover, the Interim Regulation helps clarify antimonopoly provisions relating to entitative and the procedural review of concentration of business operators. These details cover the entire process of notification, review, conditional approval, illegal implementation and etc. Overall, the Interim Regulation integrates the common contents of all such aspects, unifies law-enforcement standards and procedures, and also adds three general chapters on general principles, responsibilities, and by-laws. The Interim Regulation also establishes a systematic and complete merger review system for business operators.

Source: State Administration of Market Regulation website:

[http://gkml.samr.gov.cn/nsjg/fgs/202010/t20201027\\_322664.html](http://gkml.samr.gov.cn/nsjg/fgs/202010/t20201027_322664.html)

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### **[AnJie News]**

#### **AnJie Partners Mr. Zhan Hao and Ms. Song Ying appear in seminar “2020’s New Policies, Hot Issues and Typical Cases in Antitrust Area”**

On October 29th, 2020, LCOUNCIL and AnJie Law Firm co-hosted a seminar, titled “2020’s New Policies, Hot Issues and Typical Cases in Antitrust Area” in Shanghai. Partners of AnJie Law Firm, Mr. Zhan Hao and Ms. Song Ying, were invited to give a lecture to interpret and analyze the new antitrust policies and hot issues in 2020 with their practical experiences. More than 60 legal professionals from auto parts, pharmaceutical, medical, FMCG, TMT and other industries participated in the seminar.

In the first part of the seminar, Mr. Zhan Hao introduced the main features of antitrust civil litigation, together with general trends in antitrust civil litigation enforcement, investigation and punishment. Then, he compared civil litigation with administrative investigations, and provided three major differences and four connections between the two. Subsequently, Mr. Zhan provided details on important

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issues in standard essential patent (“SEP”) antitrust civil litigation, together with interpretation of cases that exemplify these issues.

In the second part of the seminar, Ms. Song Ying provided a general overview of revisions to five newly-released Guidelines and then elaborated on their key content revisions. For example, regarding the *Antitrust Guidelines on Intellectual Property Rights*, she analyzed two aspects: intellectual property agreements that may exclude and restrict competition and safe harbor provisions. In the *Antitrust Guidelines for Applying Leniency Program to Horizontal Monopoly Agreements*, she also revealed insights from the perspective of compliance and from the perspective of the organizers of monopoly agreements, among others.

Finally, Ms. Song summarized and presented the practical significance and effect of these five Guidelines, reminding enterprises that when facing specific issues in their daily operation, they should not only follow the Guidelines, but also conform to the expectations of law enforcement authorities. In addition, Ms. Song also

introduced the newly-released *Interim Regulations on the Review of Concentration of Business Operators*, interpreted its provisions from a practical point of view, and proposed corresponding compliance insights and response strategies.

During the seminar and the discussion after, legal professionals

enthusiastically asked questions, and Mr. Zhan and Ms. Song answered the questions with their practical experience. The in-depth speeches of Mr. Zhan and Mr. Song were highly praised by the legal professionals.





**【Contact Us】**

**詹昊 合伙人**  
**安杰律师事务所**  
**T: +86 10 8567 5966**  
**E: zhanhao@anjielaw.com**



**宋迎 合伙人**  
**安杰律师事务所**  
**T: +86 10 8567 5979**  
**E: songying@anjielaw.com**

**Address** 19/F, Tower D1, Liangmaqiao Diplomatic Office Building, No. 19 Dongfangdonglu,  
Chaoyang District, Beijing 100600, P.R.China

**Phone** (+86) 10 8567 5988 / (+86) 21 2422 4888

**Fax** (+86) 10 8567 5999 / (+86) 21 2422 4800

**Website** <http://www.anjielaw.com>

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