

Competition Newsletter

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【Regulatory News】

The State Administration of Market Supervision (SAMR) punishes Yueda Investment and Changjiu Logistics for failure to file a notification in accordance with the law for establishing a joint venture

In November 2020, the State Administration for Market Regulation issued an administrative penalty against Yueda Investment and Changjiu Logistics for the establishment of a joint venture, Yueda Changjiu Logistics, which failed to notify SAMR according to the law.

According to the investigation, the transaction was to establish a joint venture, in which Yueda Investment holds 51% of the equity interest and Changjiu Logistics 49%. This transaction, as stipulated in Article 20 of Antitrust Law, constitutes a concentration of operators requiring notification.

The global and domestic turnover of Yueda Investment in 2018 was (slightly) above RMB 100 million yuan; the global and domestic turnover of Long-Distance Logistics in 2018 was (slightly) above RMB 100 million yuan, which met the notification threshold stipulated in Article 3 of the *Provisions of the State*

Council on the Criteria for the Reporting of Concentration of Operators, and as such the concentration must be reported. The newly established joint venture enterprise Yueda Long-Term Logistics completed its business registration on September 5, 2019, but failed to declare its establishment to SAMR, violating Article 21 of the *Anti-Monopoly Law* and constituting an undeclared concentration of operators.

SAMR assessed the effects of the joint venture's establishment on market competition and concluded that this concentration of operators will not have the effect of excluding or restricting competition.

Based on the above investigation and assessment, SAMR decided to impose an administrative penalty of RMB 300,000 on each of Yueda Investment and Long-Term Logistics.

Source: SAMR's Website

The penalty decision is detailed in:

http://www.samr.gov.cn/fldj/tzgg/xzcf/202011/t20201123_323816.html

SAMR penalizes ANE for its acquisition of Changshan Zongka's stake without lawful notification

On October 23, 2020, the SAMR issued an administrative penalty against ANE Fast Logistics (Hong Kong) Limited ("ANE") for failing to notify antitrust authorities of its acquisition of an 100% equity interest in Changshan Zhongka Yunli Supply Chain Management Company ("Changshan Zongka").

According to the investigation, ANE acquired a 100% equity interest in Changshan Zongka and obtained sole control over the company. This transaction falls within the scope of operator concentration as stipulated in Article 20 of the *Antitrust Law*. The global and domestic turnover of ANE and Changshan Zongka in 2017 met the notification threshold stipulated in Article 3 of the State Council's *Provisions on the Notification Threshold for Operator Concentration*. The transaction was completed with the registration of the change of share ownership and was not reported to the SAMR prior to such time, in violation of the *Antitrust Law*.

SAMR assessed the effect of ANE's acquisition of Changshan Zongka on market competition and concluded that it would not have the effect of excluding or restricting competition.

Based on the above investigation and assessment, the SAMR imposed an administrative penalty of RMB 300,000 against ANE.

Source: SAMR's Website

The penalty decision is detailed in:

http://www.samr.gov.cn/fldj/tzgg/xzcf/202011/t20201110_323270.html

Anhui Market Supervision Authority punishes four driving schools for monopoly agreements, including Anhui Jiaotong Group Chuzhou Auto Transport Co.

In July 2019, the Anhui Provincial Market Supervision Bureau investigated four driving schools, including Anhui Jiaotong Group Chuzhou Auto Transport Co. for alleged monopoly agreements. On November 2nd 2020, the Anhui Provincial Market Supervision Bureau decided to impose administrative penalties on four parties involved in the case.

According to the investigation, from 2018 to the beginning of 2019, four driving schools in Dingyuan County offered driving lessons. During this period, lessons were priced at about 2,900 RMB per person for C1 class license training and 6,500 RMB per person for B2 class license training.

On February 19, 2019, the parties and other four driving school principals held a meeting in Dingyuan county under the theme of “Industry self-discipline: Regulating the Dingyuan County Driving Market,” and established a set rate for driving lessons. The parties and other four driving school principals signed and sealed the "Meeting Minutes" from said meeting.

After the meeting, the four driving schools and their sub-training center charged their lessons in accordance with the set rate agreed on in the Meeting Minutes. In the middle of May 2019, due conflicts among the driving schools, said schools held another meeting and decided to terminate their cooperation. But by the end of August 2019, the four driving schools and the sub-training center under their control still charged for lessons at the rate agreed in the Meeting Minutes.

In comparison to some of the driving schools in Chuzhou City, Mingguang City, and Fengyang County around Dingyuan County, the four driving schools charged prices driving lessons that were significantly higher than those in surrounding markets.

The Anhui Market Supervision Administration Bureau took many factors into consideration when weighing its decision. First, the parties concerned cooperated with the investigation, and truthfully stated the relevant facts. Moreover, the impact of the illegal behavior was relatively minor and short in duration. Considering business difficulties for enterprises due to the coronavirus epidemic, the Anhui Market Supervision Administration Bureau decided to order the parties concerned to stop the illegal behavior and impose the following comparatively lenient penalties:

1. Confiscation of illegal income.
2. A fine of 2% of sales for 2018.

Source: SAMR’s Website

The penalty decision is detailed in:

http://www.samr.gov.cn/fldj/tzgg/xzcf/202011/t20201124_323848.html

Zhejiang Market Supervision Administration Bureau punishes Wanbond Pharmaceutical Group for abusing its dominant market position.

In August 2020, the Zhejiang Market Supervision Administration Bureau initiated an investigation against Wanbond Pharmaceutical Group ("**Wanbond**") on suspicion of market dominance. In November 2020, the Zhejiang Market Supervision Administration Bureau decided to impose an administrative penalty.

In September 2015, Wanbond signed a Product Agency Agreement with Guangzhou Yipinhong Pharmaceutical Co. ("**Yipinhong**"). This agreement was in force from September 1, 2015 to December 31, 2020. Under this "Product Agency Agreement", the party agrees to sell bromhexine hydrochloride to Yipinhong at the price of 3,000 RMB/KG; and requests that Yipinhong hand over the production of bromhexine hydrochloride to Wanbond as the national general agent of the product at the price of 1.7 RMB/stick. Per the agreement's terms, Yipinhong shall not sell the above-mentioned products by themselves or give the above-mentioned products to any third party, nor shall it authorize any third party to sell the

above-mentioned products without Wanbond's written consent; Wanbond also obtained the right to determine distributorship of the products at the provincial level.

Wanbond abused its dominant position in the market of bromhexine hydrochloride raw material by imposing unreasonable trading conditions and requiring drug manufacturers to hand over all the bromhexine hydrochloride injectable drugs to it for sale, thus excluding and restricting competition in the relevant drug market and harming the order of competition and the legitimate rights and interests of drug manufacturers.

Considering that Wanbond actively cooperated with the investigation and took rectification seriously, and also that the duration of the illegal behavior was not too long, SAMR ordered that Wanbond cease the illegal behavior, and decided to impose the following administrative penalties: confiscate Wanbond's illegal income 232,205.11 yuan and impose a fine of 3% of its 2019 annual sales of 2,241,753.58 yuan, which is 2,473,958.69 yuan.

Source: SAMR's Website

The penalty decision is detailed in:

http://www.samr.gov.cn/fldj/tzgg/xzcf/202011/t20201117_323624.html

Zhejiang Province Market Supervision Administration Bureau punishes Jiangshan City Funeral Parlor for abusing its dominant market position

In July 2020, the Zhejiang Market Supervision Bureau investigated the alleged abuse of market dominance by a funeral parlor in Jiangshan City, and in October 2020, the Zhejiang Market Supervision Bureau issued an administrative penalty against said parlor.

According to the "Regulations on funeral management in Zhejiang Province", cremation services can only be provided by Jiangshan Funeral Parlor in the relevant geographic market; but the funeral caskets and other funeral supplies can be sold by other operators licensed by the relevant civil affairs department. From 2007 to December 2019, while providing cremation services to a bereaved family, Jiangshan Funeral Parlor abused its dominant market position by requiring that the bereaved buy a casket from its store specifically.

Failure to purchase the casket from Jiangshan Funeral Parlor would result in no urn for the bereaved, or non-timely delivery of said urn.

On April 20, 2018, the director of the Jiangshan funeral parlour held a meeting and decided to change the policy to "fines". That is, when the bereaved family purchases caskets from operators besides said funeral parlour while entrusting the funeral parlour for cremation, the operator is required to pay a "fine" to the funeral parlour. Otherwise, the funeral parlour will not provide a furnace or provide a furnace on time. The fine in question was set at 600 yuan/occurrence. On 2018 November 12, and 2019 April 1, the director of the funeral parlour in Jiangshan City held meetings and decided to increase the price to \$1,000/occurrence and then \$1,500/occurrence, respectively. It was not until August 12, 2019 that Jiangshan funeral parlour stopped enforcing the above "fine" policy.

Source: SAMR's Website

The penalty decision is detailed in:

http://www.samr.gov.cn/fldj/tzgg/xzcf/202011/t20201109_323230.html

Zhejiang Market Supervision Administration Bureau punishes used car market enterprises in Huzhou City, Zhejiang Province, for entering into and implementing monopoly agreements.

On November 2, 2020, the Zhejiang Market Supervision Administration Bureau decided to impose administrative penalties on the five parties involved in this case.

According to the Ministry of Public Security's Motor Vehicle Registration Regulations, used cars can only be traded at the motor vehicle's domicile, so used cars in Huzhou can only be traded in Huzhou. There are five qualified used car trading platforms in Huzhou: Jiangnan Used Car Trading Platform, Anji Volkswagen, Deqing Shunda, Zhejiang Zhebei, and Changxing Navigator. These five companies are all engaged in used car trading services and charge customers for their services. Jiangnan Used Car Trading Platform, Anji Volkswagen, and Deqing Shunda are competitive operators in the Huzhou used car trading services market. Although Zhejiang Zhebei and Changxing Navigator have a common control relationship with each other, this does not affect their competitive relationship with Jiangnan Used Car

Trading Platform, Anji Volkswagen, and Deqing Shunda, respectively.

In February 2011, Jiangnan used car trading platform led the first working meeting of the Huzhou used car trading market, held together with Anji Volkswagen, Deqing Shunda, Zhejiang Zhebei, etc. On March 1, 2011, the five used car trading market enterprises formed a report titled "On the Unification of the Huzhou Used Car Trading Service Charges" and sent the report to The Huzhou Trade and Food Bureau. The competent authority of the Huzhou City Trade and Food Bureau, and the five enterprises of the used car market, all affirmed this report by affixing their seals on the document. Among other items, the report mainly shows agreement on a unified standard for transaction service fees, and the annexes set out the specific fees for various types of vehicles according to their year of purchase, capacity, quality, etc. The report's policies were implemented from April 1, 2011 onwards.

In July 2014, Changxing Navigator was established to compete in the used car trading service market in Huzhou City, especially in Changxing County, and from May 2016, to avoid competition, Changxing Navigator and Zhejiang

Zhejiang also implemented the report's fee standards. Accordingly, the above described used car enterprises were all involved in implementing used car transaction service fee standards in their business premises.

Zhejiang Market Supervision Administration ordered the parties to stop this illegal behavior and decided to impose the following administrative penalties on the parties.

1. Confiscation: \$22,380,148.83
2. A fine of \$464,730.4. 5% of 2019 sales

Source: SAMR's Website

The penalty decision is detailed in:

http://www.samr.gov.cn/fldj/tzgg/xzcf/202011/t20201105_323025.html

SAMR unconditionally approves 43 cases of operator concentration in November

Between October 26 and November 22, 2020, SAMR granted unconditional approval for 43 concentrations of operators, mainly in the chemical, investment, medical, automotive and other industries.

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Source: SAMR's Website

http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202011/t20201124_323846.html

http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202011/t20201118_323636.html

http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202011/t20201110_323269.html

http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202011/t20201103_322924.html

SAMR issues Antitrust Guidelines for the Platform Economy Industry (Drafted)

In order to prevent and stop monopolistic behavior in the platform economy, guide operators in the platform economy to operate in compliance with the law, and promote the sustainable and healthy development of China's online economy, SAMR drafted and issued the *Antitrust Guidelines for the Platform Economy Industry (Drafted)*. Relevant corporations and individuals are welcome to propose amendments and provide feedback to SAMR by November 30, 2020.

The Draft consists of six chapters and 24 articles, including general provisions, monopoly agreements, abuse

of dominant market position, concentration of operators, and abuse of administrative power to exclude or restrict competition.

The General Provisions of the Exposure Draft introduce the basic principles of anti-monopoly regulation in the platform economy sector and clarify that demand-substitution and supply-substitution analysis methods are used to define relevant markets in the platform economy sector.

Chapter 2 lists four specific forms of antitrust agreements, including horizontal monopoly agreements, vertical monopoly agreements, axial agreements, and concerted behavior, for which Chapter 2 provides a corresponding leniency regime.

Chapter 3 specifies six factors to be considered in determining market dominance, taking into account the characteristics of the platform economy, and stipulates in Articles 12-17 the six types of market dominance abuse which require special consideration.

The special requirements for concentration notification by operators in the platform economy are set out in Chapter 4. According to Article 18, turnover may be calculated differently

depending on the operator's business model. In addition, Chapter IV provides for cases where the antimonopoly enforcement agency takes the initiative to investigate, as well as factors to be taken into account when assessing the competitive impact of a concentration.

Chapter 5 mainly considers the abuse of administrative power to exclude or restrict competition, in six manifestations, as well as specific bases for review.

Source: SAMR's Website

The penalty decision is detailed in:

http://www.samr.gov.cn/hd/zjdc/202011/t20201109_323234.html

【AnJie News】

AnJie Attorneys Elected to Board of Directors of the Asian Competition Law Association (ACA), Deliver Speech at ACA Webinar

On November 20, 2020, the 12th Annual Asian Competition Association (ACA) Conference was successfully held online. In addition to experts from the three founding countries of the ACA, China, Japan and Korea, experts in the field of antitrust from India and Vietnam also joined in to discuss antitrust developments related to the digital economy in their respective jurisdictions. At the conference, Mrs. Song Ying, a partner with Anjie Law Firm, delivered an English speech, which was widely praised. At the same time, Dr. Zhan Hao, partner of Anjie Law Firm, was elected as a new board member of the ACA.

AnJie Attorneys Receive Several Antitrust Awards and Deliver Speeches During China Intellectual Property Forum 2020

The 7th China Intellectual Property Forum and the 2nd China Innovation Forum were held in Beijing. The forum was organized by the Beijing Arbitration Commission, Beijing Intellectual Property Law Research Association, Organizing Committee of the China IP Forum, and the Beijing China IP Institute. The event theme was titled "New Economy, New Opportunities, New Challenges: Intellectual Property Promotes Domestic and International Double-Cycle Construction." During the event, many experts shared their views on the topic, and Mrs. Song Ying, a partner with Anjie Law Firm, was invited to deliver a speech on "Antitrust Civil Litigation of Standard Essential Patents".

Dr. Zhan Hao, partner with AnJie Law Firm, was honored with the award "Top Ten Barristers of the Year" and Song Ying, partner of AnJie Law Firm, was honored with the award "Top Ten Antitrust Lawyer of the Year."

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