

China Competition Newsletter

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【Regulations】

Chongqing AMR Penalizes Five Liquefied Gas Bottling Enterprises over Monopoly Agreement

The State Administration for Market Regulation ("SAMR") issued a decision of administrative penalty on March 18, 2021 against Wushan Xinglong Petrochemical Co., Ltd. and four other liquefied gas bottling companies in Chongqing for having reached and implemented a monopoly agreement. The case was initiated by the Chongqing Administration for Market Regulation ("Chongqing AMR") in July 2020, and the decision was made on February 20, 2021.

An investigation revealed that, from January 18 to March 28, 2020, five companies had implemented an agreement whereby one enterprise would operate while the remaining four would cease operations and share in the profits of the first. This conduct led to unique price distortions in the price of bottling service in Wushan county. This conduct restricted and eliminated market competition, impaired the market order, and infringed upon the interests of the Wushun County enterprises engaged in the supply of bottled gas, who lost the ability to bargain and choose among

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different bottling service providers.

In light of the parties' active cooperation in the investigation, the short duration of the illegal act, the minor damage caused to the market, the limited scope of impact, and the negligible portion of illegal gains, among others, the Chongqing AMR decided to impose a fine of 3% on each of the enterprises' 2019 sales revenue.

Source: SAMR Website

Please refer to the decision for details at:
[Http://www.samr.gov.cn/fldj/tzgg/xzcf/202103/t20210318_327033.html](http://www.samr.gov.cn/fldj/tzgg/xzcf/202103/t20210318_327033.html)

Sichuan AMR Penalizes Fushun Gas for Abuse of Market Dominance

The SAMR issued a decision of administrative penalty on April 1, 2021 against Fushun Gas Co., Ltd. ("Fushun Gas") for abuse of market dominance. The case was initiated by the Sichuan Administration for Market Regulation ("Sichuan AMR") on April 22, 2020 and the decision was made on March 12, 2021.

An investigation revealed that, Fushun Gas, without justified reasons, took advantage of its dominance in the pipeline gas supply service market in the business area of Fushun County. It

imposed and collected compulsory deposits from non-resident users in the name of "advance payments of gas", which damaged the legitimate rights and interests of non-resident users, public interests in a fair market, and violated the market transaction rules concerning fair competition. Moreover, the "advance payment of gas" collected by the parties could not be used to offset gas fees, making the payment an unreasonable condition. This act violated Item (5) under Article 17 of the Anti-monopoly Law (“AML”), and constituted an abuse of market dominance by attaching unreasonable conditions to a transaction without justified reasons.

In view of the fact that Fushun Gas truthfully reported on its act, provided relevant materials, actively cooperated in the investigation, and had begun to refund the "advance payment of gas" to non-resident users before the Sichuan AMR launched the investigation, the Sichuan AMR decided to impose a fine amounting to 1% of Fushun Gas' 2018 sales revenue.

Source: SAMR Website

Please refer to the decision for details at:

[Http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210401_327474.html](http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210401_327474.html)

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SAMR Penalizes Alibaba for Monopolistic Conduct

The SAMR issued a decision of administrative penalty and an administration guidance on April 10, 2021 against Alibaba Group Holding Limited (“Alibaba”) for monopolistic behaviour in the online retail platform services market in China. The case was initiated by the SAMR in December 2020 and the decision was made on April 10, 2021.

An investigation revealed that, since 2015, Alibaba had abused its dominance in the online retail platform services market in China by prohibiting business operators on the Alibaba platform from operating or participating in promotional activities on other competitive platforms. The act eliminated and restricted competition in the relevant market, infringed upon the legitimate rights and interests of the business operators on the Alibaba platform, impaired the interests of consumers, hindered the innovative development of the platform economy, and is without justification. As such, Alibaba abused its market dominance in violation of Item (4), Paragraph 1, Article 17 of the AML.

In light of the nature, extent and duration of the illegal act, and

considering that Alibaba can conduct in-depth self-monitoring, cease the illegal conduct, and rectify as required, the SAMR decided to impose a fine of 4% of Alibaba's sales value in China in 2019, totaling 18.228 billion yuan.

In addition to the penalty, the SAMR issued an administrative guidance to Alibaba on April 6, 2021, requiring Alibaba to fully regulate its activities, strictly implement the relevant responsibilities of a platform enterprise, improve its internal compliance control system, protect the legitimate rights and interests of both business operators and consumers on the Alibaba platform, and actively safeguard fair competition to promote market innovation and development.

Source: SAMR Website

Please refer to the decision for details at:

[Http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210409_327698.html](http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210409_327698.html)

Shanghai AMR Penalizes Sherpa for Abuse of Market Dominance

The SAMR issued a decision of administration penalty against Shanghai Sherpa Trade Development Co., Ltd. (“**Sherpa**”) on April 12, 2021 for abuse of market dominance. The case was

initiated by the Shanghai Administration for Market Regulation in June 2019, and the decision was made on December 25, 2020.

An investigation revealed that, from January 2017 to October 2019, Sherpa took advantage of its dominance in Shanghai's market for English language online food ordering platform. Sherpa reached cooperation agreements containing "clauses on the exclusive right of delivery" with all its restaurant operators, and formulated and implemented a "plan on the exclusive right of delivery." Sherpa's exclusivity agreement restricted a large number of restaurants in the relevant market, seriously weakened their competitiveness, excluded and restricted competition in the relevant market, and was without justification. By abusing its market dominance to restrict transactions, Sherpa violated Item (4), Paragraph 1, Article 17 of the AML.

In light of the fact that Sherpa was able to actively cooperate in the investigation, took the initiative in rectifying its conduct, and ceased its illegal conduct from November, 2019 onwards, and that it was impossible to calculate Sherpa's illegal gains due to the difficulty in determining the fair delivery

price and commission fees for online takeaway services in a competitive market, the Shanghai AMR decided to impose a fine amounting to 3% of Sherpa's 2018 sales revenue.

Source: SAMR Website

Please refer to the decision for details at:

[Http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210412_327737.html](http://www.samr.gov.cn/fldj/tzgg/xzcf/202104/t20210412_327737.html)

SAMR Penalizes Yangtze River Pharmaceutical Group over Monopoly Agreement

The SAMR issued a decision of administrative penalty on April 15, 2021 against Yangtze River Pharmaceutical (Group) Co., Ltd. (“**Yangtze River Pharmaceutical Group**”) for having implemented monopoly agreements. The case was initiated by SAMR in November 2019, and the decision was made on April 15, 2021.

An investigation revealed that, by entering into cooperation agreements, issuing written or oral notifications of price adjustment, Yangtze River Pharmaceutical Group reached agreements of resale price maintenance with downstream enterprises such as pharmaceutical wholesalers or pharmacies. It also took measures such as

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formulating detailed rules, conducting supervision, penalizing dealers for low price transaction, monitoring online pharmaceutical price through third-party agency, among others, to ensure the implementation of such agreements. Its conducts excluded and restricted competition, impaired the interests of consumers and public interests in the market, and violated Article 14 of the AML.

Accordingly, the SAMR decided to impose a fine amounting to 3% of Yangtze River Pharmaceutical Group’s 2018 sales revenue, totaling 764 million yuan.

Source: SAMR Website

Please refer to the decision for details at:

http://www.samr.gov.cn/xw/zj/202104/t20210415_327851.html

SAMR Unconditionally Approves 63 Concentrations of Undertakings from March to April

SAMR unconditionally approved 63 concentrations of undertakings from March 15, 2021 to April 18, 2021, mainly involving industries in the energy, logistic and machinery markets, among others.

Source: SAMR Website

http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202103/t20210323_327180.html
http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202104/t20210401_327500.html
http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202104/t20210407_327625.html
http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202104/t20210413_327795.html
http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202104/t20210420_327987.html

[gs/202104/t20210407_327625.html](http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202104/t20210407_327625.html)
http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202104/t20210413_327795.html
http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202104/t20210420_327987.html

【AnJie News】

AnJie Legal Institute of Digital Economy Holds First Webinar

The first webinar held by AnJie's Legal Institute of Digital Economy, "Webinar on Hot Issues of Legal Practice in Digital Economy" concluded successfully on April 13, 2021, in which more than 200 professionals and experts in the industry attended.

During the webinar, speakers shared their insights on digital economy from a number of perspectives. These perspectives included the protection of data rights and interests under intellectual property laws and *Anti-Unfair Competition Law*, the legal risks involved with the digitization of enterprises, antitrust compliance for internet enterprises in an era of close regulatory supervision, and intellectual property protection for platform operators, among others. The speakers' answers to the questions raised by attendees were also well received.

The conference was chaired by Dr.

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Zhan Hao, Partner of AnJie Law Firm. During the webinar, Zhan Hao analyzed complex legal issues and challenges within the new digital economy and stressed the role of conducting in-depth legal research in order to successfully adapt to this economy's new realities.

AnJie Lawyers Pen the Automobile Chapter of CPI Antitrust Chronicle 2021

Invited by Competition Policy International ("CPI") to contribute to its Antitrust Chronicle, AnJie Lawyers Zhan Hao, Song Ying, and Yang Yuhui co-authored "Antitrust Enforcement and Litigation in China's Automobile Industry" in the CPI Asia column. The chapter, based on an update of anti-monopoly law enforcement policies and procedures, litigation procedures, and investigative procedures in the automobile industry, analyzes in-depth the core anti-monopoly issues in the automobile industry. It also provides informative context and insights on

trends and background within the industry, which is helpful for enterprises and professionals to better understand the particularities of China's system.

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