

Llinks Client Alert
Antitrust and Competition
October 2020



Shanghai · Beijing · Shenzhen · Hong Kong · London

LINKS
Law Offices
通力律师事务所

Links awards in antitrust and competition

- Law Firm of the Year (China) : Client Service by *Chambers and Partners* (2020)
- Excellent Law Firm in Enterprise Compliance and Excellent Comprehensive Law Firm of the Year (Shanghai) by *China Business Law Journal* (2020)
- Leading PRC Law Firm in Antitrust and Competition by *LEGALBAND* (2016-2020)
- Leading PRC Law Firm in Antitrust and Competition by *Legal 500* (2017- 2020)
- Top Ten Firms in China’s Power List by *Asian Legal Business* (2015, 2016)
- Leading PRC Law firm in Competition by *IFLR1000* (2017-2019)
- Leading PRC Law Firm in Antitrust and Competition by *Chambers and Partners* (2009-2011)

I. Legislation

1. The State Administration for Market Regulation (“**SAMR**”) issues the *Guidelines on Antitrust of Active Pharmaceutical Ingredients (Draft for comments)* (“**the Draft**”). The Draft provides detailed definition and rules on the monopolistic conducts in relation to active pharmaceutical ingredients (“**API**”). It aims to promote the healthy development of the API industry, maintain competition in the market of APIs and protect the consumers and the public, which helps prevent and control the monopolistic behaviors in APIs.

Links Comments: The API industry has been the focus of anti-monopoly law enforcement authorities in recent years. In April this year, the Anti-monopoly Bureau imposed a fine totaling RMB 300 million on three API distributors of Calcium Gluconate for abusing their dominant position in the market. As prescribed in the Draft, law enforcement agencies will impose severer punishment on the monopolistic conducts of API operators. We suggest that relevant API manufacturers should, in accordance with the Draft and the *Guide to the Pricing Acts of Business Operators of Drugs in Short Supply and APIs* issued by the NDRC in 2017, carry out self-assessment, review the current business model and the compliance of business activities, in order to make business adjustments in a timely manner.

2. SAMR issues *the Measures for the Supervision and Administration of Online Transactions (Draft for Comments)* (“**the Measures**”) by revising the *Administrative Measures on Online Transactions*. Targeting the long lasting requirement by online transaction platform to require participants of the platform to “choose one from two”, the Measures specify that an online trading platform operator shall not abuse its advantageous position to interfere with the independent operation of operators on the platform, and shall not impose unreasonable restrictions or conditions on the cooperation between the operators on the platform thereof and other platforms.

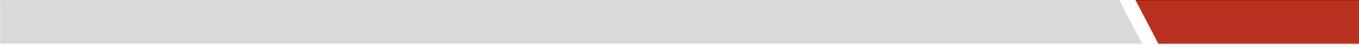
3. The 26th session of the Standing Committee of Shanghai People's Congress approved the newly revised *Shanghai Anti-unfair Competition Regulations*, which is the first local regulation adopted in China in respect of anti-unfair competition after the revision of the Anti-Unfair Competition Law in 2017 and 2019. The Regulations clarify the seven types of unfair competition behaviors as specified in the *Anti-unfair Competition Law* based on the unique characteristics of Shanghai Municipality. The Regulations will take effect as of January 1, 2020.
4. SAMR issued the *Provisions on the Review of Concentration of Undertakings* ("**the Provisions**"). The Provisions integrate four departmental rules and two regulation documents to specify the substantive and procedural regulations regarding concentration of undertakings. The Provisions cover the full cycle of China's merger control procedures, including the filing and review of merger control mechanism, the supervision and implementation of restrictive conditions, and the investigation on illegal implementation of the mergers and acquisitions. In addition, The Provisions add three more chapters to establish a complete system for merger review, including General Provisions, Legal Liability and Supplementary Provisions.

II. Law Enforcement

1. The Ningxia Autonomous Region Administration for Market Regulation fined 11 used car dealers in Shizuishan for entering into monopoly agreements. The dealers carried out a joint operation under the organization of the Shizuishan Used Car Circulation Industry Association, and reached and implemented an oral agreement on used car transaction services, appraisal service prices, and even distribution of profits, constituting an agreement that fixes prices and splits sales market.

Llinks Comments: In this case, the determination of transaction service fee was a key issue in dispute. The appraisal service fee was fixed at RMB 20 per vehicle during the joint operation period. The parties claim that the appraisal service fee included appraisal, photographic rubbing, contract drafting, etc., and it was reasonable to charge a service fee of RMB 20 for the appraisal service. Regarding this issue, the law enforcement authorities believed that whether the fees charged are reasonable is not a factor in determining a monopoly agreement. Where the parties agree to charge an appraisal fee of RMB20, it constitutes a monopoly agreement to fix commodity price. It is advisable that business operators shall be cautious about charging unified service fees in the future.

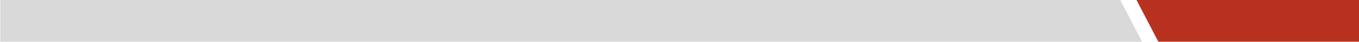
2. As of the date of this alert, in October SAMR approved 33 mergers in application of simplified procedures and unconditionally approved 19 mergers in application of normal procedures, covering industries such as biology, automobile, food, steel and chemical.
3. SAMR, together with 14 other department, launched the "2020 Cyber-sword Operation". The key tasks including cracking down on unfair competition behaviors and regulating the competition order of the network



market. In accordance with the *Anti-trust Law*, *Anti-unfair Competition Law*, *E-commerce Law* and other laws, elimination or restriction of competition, hindrance or destruction of other businesses services and networking products shall be severely punished. An E-commerce platform operator imposing unreasonable restrictions or conditions on operators on its platforms shall be investigated and punished in accordance with the Law.

III. Foreign Trend

1. The EU regulatory authorities have sought to curb the market dominance of Internet magnates through a "blacklist" system. The Science and Technology Anti-Monopoly Survey Report released by the US House of Representatives shows that "GAFA" (Google, Apple, Facebook and Amazon) has committed monopoly and anticompetitive activities. After the stringent regulation of tech magnates in United States and Europe, Japan's Fair Trade Commission also announced tougher antitrust scrutiny of big tech firms.
2. The United States Department of Justice, along with 11 states, has filed an antitrust lawsuit against Google in Federal District Court for the District of Columbia to prevent Google from illegally maintaining its monopoly on search engine and search advertise in a variety of ways. Previously, EU regulators have filed three antitrust lawsuits against Google and fined it \$9 billion.
3. The EU Commission announced that it would impose a fine of 18 million euros on auto parts suppliers for their monopolistic practices. In this case, Magna constitutes monopoly conducts for coordinated prices and exchanged commercially sensitive information to maintain existing orders and increasing the price, where it cooperated with Brose to provide Daimler with Door Control Module and Window Regulator, and cooperated with Kiekert to provide Daimler with spring lock and locking plate.



About Llinks's Antitrust Compliance Services

To meet clients' ever-growing needs in antitrust compliance, Llinks assembled a team consisting of experienced antitrust compliance experts. The antitrust compliance team is comprised of former general counsels and compliance heads of fortune 500 companies and other leading Chinese companies, former law enforcement officers as well as transaction and litigation lawyers specialized in antitrust compliance in relation to sectors under stringent antitrust compliance regulatory framework, such as drugs and health, automobiles and auto parts, energy and chemicals, and finance and insurance.

Llinks team is capable of utilizing its profound knowledge and experience in serving all kinds of antitrust compliance needs of clients, including monopoly agreements, compliance of companies with dominant position, and merger filings. Based on its deep understanding of antitrust laws and clients' industries, Llinks team is well capable of advising clients on antitrust issues, assisting clients to establish internal antitrust compliance system, providing highly efficient merger filing services, and assisting clients to respond to administrative dawn raids.

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