

China Competition Newsletter

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In This Issue

- Supreme People's Court Amends Monopoly Case-related Judicial Interpretations
- SAMR Initiates Investigation into Vipshop
- Sichuan AMR Punishes Sichuan Cement Association and Five Companies
- Heat-Supply Company Accused of Market Dominance Abuse, Prevails at First Instance
- Wuhan Intermediate People's Court Releases Second Instance Judgements Concerning Dispute over Exclusive Diclofenac Sodium API Distribution Agreement
- SAMR Conditionally Clears Cisco's Acquisition of Acacia
- SAMR Unconditionally Approves 29 Concentrations of Undertakings in January
- AnJie Partner Zhan Hao Honored in *China Business Law Journal's* 2020 A-List of Lawyers
- AnJie Partners Zhan Hao and Song Ying Contribute to *Merger Control 2020*

【Regulations】

Supreme People's Court Amends Monopoly Case-related Judicial Interpretations

During its No. 1823 Conference of the Judicial Committee, the Supreme People's Court recently released a decision amending 18 judicial interpretations. These include the *Interpretations of the Supreme People's Court Concerning Certain Issues on Application of Law for Trial of Cases on Disputes over Patent Infringement (II)*. Also included among these amendments were six articles contained in the *Provisions of the Supreme People's Court on Several Issues Relating to Laws Applicable for Trial of Civil Dispute Cases Arising from Monopolies*. Please refer to <http://www.court.gov.cn/fabu-xiangqing-282671.html> for details. Said amendments have since come into force, on January 1, 2021.

Source: Supreme People's Court Website
Please refer to the amendments for details at: <http://www.court.gov.cn/fabu-xiangqing-282671.html>

SAMR Initiates Investigation into Vipshop

Recently, the State Administration

for Market Regulation ("SAMR"), in accordance with a report, initiated an investigation against Vipshop (China) Co., Ltd. and Guangzhou Vipshop E-Commerce Co., limited. for suspected unfair competition.

Source: SAMR Website

Please refer to the notification for details at:

http://www.samr.gov.cn/xw/zj/202101/t20210114_325208.html

Sichuan AMR Punishes Sichuan Cement Association and Five Companies

Recently, the Sichuan Administration for Market Regulation ("Sichuan AMR") released basic details concerning seven administrative penalty decisions in a monopoly case involving actors in Sichuan Province's cement industry. The release, on Sichuan AMR's website, reveals that a fine capped at CNY500,000 was imposed on the Sichuan Cement Association for organizing the conclusion of monopoly agreements. For reaching and implementing said monopoly agreements, five cement companies, including Southwest Cement Co., Limited, were imposed fines of 1% or 2% of their 2016

turnover. The total amount of these fines amounts to nearly CNY60 million. Notably, in this case Sichuan Shuangma Cement Co., Ltd., was exempt from punishment under the *Anti-Monopoly Law's* leniency clause (para 46(2)).

Source: Sichuan AMR Website

Please refer to one of the decisions for details at:

<http://scjgj.sc.gov.cn/scjgj/xxcf/2021/1/7/06c9bff08990495696f13a84530186d1.shtml>

Heat-Supply Company Accused of Market Dominance Abuse, Prevails at First Instance

On December 31, 2020, the Ningbo Intermediate People's Court's first instance decision over the monopolistic pricing dispute between Shengzhou Haoyunlai Printing and Dyeing Co., Ltd. ("Haoyunlai") vs. Zhejiang Xinzhonggang Clean Energy Co., Ltd. ("Xinzhonggang") ((2020) Zhe 02 Zhi Min Chu No. 182) was released on China Judgements Online. Plaintiff Haoyunlai filed its complaint lawsuit on May 28, 2020, accusing Xinzhonggang of abuse of market dominance. The case was tried on September 8 and October 23, 2020, and the judgements of the first instance

was made on October 30, 2020.

The court held that the defendant did indeed hold market dominance over the relevant market. However, the court also ruled that plaintiff's reasons for the defendant's abuse of market dominance, namely over-pricing and discriminatory treatment of its customers, were untenable. Plaintiff's claims were not well-founded and were not supported, leading the court to dismiss Haoyunlai's action.

Source: China Judgements Online

Please refer to the judgement for details at:

<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=a7be9014a0084c74a2dcaca200fa9bec>

Wuhan Intermediate People's Court Releases Second Instance Judgements Concerning Dispute over Exclusive Diclofenac Sodium API Distribution Agreement

On January 13, 2021, the Wuhan Intermediate People's Court's appellate ruling, over the sales contract dispute between Hubei Jianneng Pharmaceutical Co., Ltd. ("Hubei Jianneng") and Henan Dongtai Pharmaceutical Co., Ltd.

("Henan Dongtai"), was released on China Judgements Online ((2020) E 01 Min Zhong No. 11175).

Both the appellants Hubei Jianneng and Henan Dongtai refused to accept the first-instance ruling made by the Dongxihu District People's Court in Wuhan, Hubei Province, and appealed to the Wuhan Intermediate People's Court. After accepting the case filing on November 12, 2020, the court heard the case and released its appellate ruling on December 29, 2020.

The court held that the appellants' grounds for appeal had neither adequate factual nor legal bases. However, based on new facts presented at second-instance, the amount of liquidated damages to be borne by Henan Dongtai in the first-instance judgement was found to be incorrect, and was amended accordingly.

In accordance with the second-instance judgements, Tangyin County's Administration for Market Regulation sent a notice to Henan Dongtai, requesting assistance in its investigation of monopolistic conduct in the diclofenac sodium API market.

Source: China Judgements Online

Please refer to the judgement for details

at:

<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=7b4605f07cfa4c2c9377acaf00c4961e>

SAMR Conditionally Clears Cisco's Acquisition of Acacia

On January 19, 2021, SAMR released its approval of Cisco Systems, Inc. ("Cisco")'s acquisition of shares in Acacia Communications Inc. ("Acacia") with remedies. SAMR received the merger control filing on October 22, 2019, and initiated the case together with its preliminary review on December 20, 2019. SAMR made its decision to conditionally approve the deal on January 14, 2021.

Upon review, SAMR held that there are vertical relationships between Acacia in the upstream markets for coherent digital signal processors, coherent photonic integrated circuits, coherent optical transceiver modules and Cisco in the downstream market for optical transmission systems. Moreover, the two have a neighboring relationship in the coherent optical transceiver module market and the router market. The geographic markets for independent coherent digital signal processors,

independent coherent photonic integrated circuits and routers, are defined as the global market. For their part, the geographic markets for coherent optical transceiver modules and optical transmission systems are limited to the China market.

SAMR concluded that this concentration may eliminate or restrict competition in the optical transmission system market of China. It arrived at this decision based on an in-depth analysis of the impact of the concentration on market competition, in terms of the market share of the undertakings in the relevant markets, the parties' control over the markets, the concentration in the relevant market, and the impact of the concentration on downstream user enterprises and other relevant undertakings.

Accordingly, SAMR approved this concentration but with remedial conditions. In accordance with the conditions, Cisco, Acacia and the merged entity shall continue to perform existing customer contracts and continue to supply coherent digital signal processors to Chinese customers. Moreover, when selling relevant digital signal processors, Cisco, Acacia and the merged entity shall

not impose any tie-in sales or other unreasonable trading conditions on Chinese customers, and appropriate management staff and employees shall be provided with training.

Source: SAMR Website

Please refer to the decision for details at:

http://www.samr.gov.cn/fldj/tzgg/ftjpz/202101/t20210119_325338.html

SAMR Unconditionally Approves 29 Concentrations of Undertakings in January

SAMR unconditionally approved 29 concentrations of undertakings from December 28, 2020 to January 17, 2021, mainly involving industries in the energy material and medical markets, among others.

Source: SAMR Website

http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202101/t20210105_324946.html

http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202101/t20210112_325148.html

http://www.samr.gov.cn/fldj/ajgs/wtjjzajgs/202101/t20210119_325343.html

【AnJie News】

AnJie Partner Zhan Hao Honored in *China Business Law Journal's* 2020 A- List of Lawyers

On January 4, 2021, the internationally renowned legal publication, *China Business Law Journal*, published its 2020 "A-List" of top legal practitioners in China. AnJie Managing Partner Zhan Hao was honored on the list for demonstrating outstanding service in advocacy and transactional matters, continuing innovation, and depth of practice experience.

The lawyers on the list were selected by *China Business Law Journal* based on extensive research. In order to select outstanding private practice attorneys in the China, *China Business Law Journal* invited more than a thousand legal counsels and partners from leading Chinese and global law firms to participate in a survey. The final list was based on nominations received from a large number of Chinese and foreign companies, law firms and other institutions as well as the observations and analysis of the *China Business Law Journal* editorial team over the years.

AnJie Partners Zhan Hao and Song Ying Contribute to *Merger Control* 2020

Recently, *Merger Control 2020* was officially released by Lexology, a professional legal publisher in the UK. Contributed to by lawyers and experts from 28 jurisdictions, the book introduces new developments of merger control review within different jurisdictions and provides suggestions regarding merger control review in specific industries and new business areas.

Invited as experts in China to author the China Chapter of the book, AnJie Partners Dr. Zhan Hao and Song Ying provide a detailed explanation on the practice and change of merger control review within mainland China during the COVID-19 pandemic, together with helpful suggestions in this regard.

The book allows antitrust lawyers, scholars, and multinational companies at home and abroad to gain key insights on antitrust law enforcement and practice in jurisdictions around the world.

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