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CHINA: An Introduction to Competition/Antitrust (PRC Firms)



China's Antitrust in 2024: Review and Outlook



Comprehensive and Detailed Improvement of Antitrust Legislation



China's antitrust legislative efforts were notably active in 2024.

In terms of behavioural regulation, the Anti-Monopoly Guidelines for Industry Associations, issued on 10 January 2024, provide detailed guidance to address the concern of frequent anticompetitive behaviours led by industry associations. To incentivise undertakings to establish antitrust compliance mechanisms, the State Administration for Market Regulation (SAMR) released the revised Antitrust Compliance Guidelines for Undertakings on April 25th, introducing a new chapter on compliance incentives that links corporate compliance with deliberation of penalties. On November 4th, SAMR issued the world's pioneering Anti-Monopoly Guidelines for Standard Essential Patents

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antitrust risks across the entire pharmaceutical value chain. These draft addresses typical anticompetitive behaviours in the sector, such as reverse payment agreements, resale price maintenance, and product hopping.

Regarding merger control, on 26 January 2024, revised filing thresholds were released, significantly raising turnover thresholds. On September 14th, new notification forms and public notice forms for simple cases were released, reducing information requirements for competition assessments to a certain extent. Notably, on December 20th, SAMR issued detailed Guidelines on Horizontal Merger Review, drawing on years of experience. These guidelines assist undertakings conduct self-assessments and enhance transparency in merger reviews. On August 16th, SAMR also published the draft Discretionary Benchmarks for Administrative Penalties for Violations of the Anti-Monopoly Law Related to Concentrations of Undertakings. This draft provides specific benchmarks, as well as factors for increasing or decreasing fines, for “gun-jumping” cases without anticompetitive effects. Once finalised, it is expected to significantly improve the predictability of enforcement activities.

In terms of antitrust litigations, on 24 June 2024, China’s Supreme Court issued the Judicial Interpretation on Monopoly-related Civil Dispute Cases (“New Judicial Interpretation”), introducing significant innovations and breakthroughs. It addresses complex procedural and substantive issues frequently disputed in practice, while substantially reducing the burden of proof on plaintiffs.

Furthermore, on 1 August 2024, China issued the Regulations on Fair Competition Review, the first administrative regulation to systematically govern fair competition reviews. Innovative supporting mechanisms also introduced

Investigation, and the Notice of Administrative Penalty (for Undertakings) or Administrative Proposal (for Administrative Organs) was further improved, employing a step-by-step approach with measures such as reminders, regulatory discussions, case establishment and investigations, administrative penalties or proposals. These enhancements enriched China's regulatory toolkit and strengthened enforcement measures.

Focus on Key Areas: Antitrust Enforcement Combining Penalties and Flexible Regulation

In 2024, China investigated and penalised 11 cases involving horizontal monopoly agreements and abuse of market dominance (no vertical penalty cases), spanning key sectors such as natural gas, water, pharmaceuticals, building materials, motor vehicle inspection, and driving schools. The case involving Weihai Water's abuse of dominance, which also involved prior antitrust civil litigation, highlighted the co-ordination between public and private enforcement. Notably, the Ningbo SUMSCOPE abuse case marked China's first antitrust penalty in the data sector, underscoring heightened regulatory attention to the role of data as a key factor of production.

On top of administrative penalties, China is increasingly utilising soft enforcement measures in 2024, such as reminders and regulatory discussions. For example, in January, SAMR issued reminders to five branded auto suppliers, urging them to address unreasonable restrictions imposed on downstream dealers. In June, SAMR reminded the Avanci patent pool of potential antitrust risks in licensing SEPs for automotive wireless communication.

simplified procedure. The average review duration was 26.6 days, while simple cases took an average of 17.5 days. Only one case received conditional clearance (Tatsuta/JX Nippon case). Concentrations between foreign companies accounted for 29% of filings in the first three quarters. Over the past year, SAMR announced three gun-jumping cases, all involving Chinese undertakings. In December 2024, SAMR launched an official investigation into the fulfillment of restrictive conditions imposed on Mellanox Technologies/NVIDIA case, highlighting continued scrutiny of the semiconductor sector as a key focus of China's merger control enforcement.

Antitrust Litigations Are Increasingly Active

According to statistics, the Intellectual Property Court of the Supreme People's Court (SPC) has accepted 282 antitrust civil and administrative second-instance cases since its establishment in January 2019. Among these, 111 cases were accepted between 1 January and 13 August 2024, indicating a significant increase in antitrust litigation activity in China during 2024.

In addition, China's antitrust judicial practice also presents several notable features:

1. Striving to make a reasonable balance between protecting innovation and maintaining competition. For instance, the SPC has overturned the first instance ruling in the abuse of dominance case related to "NdFeB" (the Hitachi Metal case);
2. Plaintiffs have seen higher success rates in cases than before. The Huaming case, the SAIC General Motors case, and the Shell case are good

- have been emphasised in both the New Judicial Interpretation and the typical cases published by the SPC. In 2024, enforcement authorities actively investigated antitrust clues identified in judicial cases, demonstrating the strengthened co-ordination;
4. There has been a significant rise in antitrust administrative lawsuits, including the first occurrence of novel antitrust administrative litigation challenging merger review decisions; and
 5. Prosecutorial agencies have actively initiated antitrust public interest litigation, targeting industries such as shared bicycles, natural gas, and pharmaceuticals.

Antitrust Developments and Outlook in China

As China gradually strengthens the foundational role of competition policy, we foresee the following trends in its antitrust landscape:

- Antitrust supplementary rules are expected to become more comprehensive and detailed, with potential developments such as Guidelines on Non-Horizontal Merger Review and safe harbor standards.
- Antitrust enforcement will continue to prioritise sectors such as pharmaceuticals, the platform economy, and natural monopolies. Additionally, global antitrust risks across jurisdictions merit attention — companies facing investigations in other jurisdictions should monitor antitrust risks in China as well.
- A combination of penalties, regulatory discussions, reminders and other flexible law enforcement measures will continue to play a role in step-by-step regulation.

cases.

- Efforts to enhance fair competition reviews and regulate administrative monopolies will intensify, accelerating the development of a unified national market.

2024年中国反垄断回顾与展望

反垄断立法进一步完善与细化

2024年，中国的反垄断立法活动颇为活跃。

行为规制方面，针对频发的行业协会组织垄断行为，《行业协会反垄断指南》于2024年1月10日出台，提供细化指导。为激励企业建立反垄断合规机制，市场监管总局（“总局”）于4月25日发布修订的《经营者反垄断合规指南》，新增合规激励章节，将企业合规建设与行政处罚相衔接。11月4日，总局出台全球首部《标准必要专利反垄断指引》，涉及标准必要专利的信息披露、许可承诺和谈判等多环节。8月9日，《关于药品领域的反垄断指南（征求意见稿）》发布，聚焦药品领域全流程反垄断风险，涵盖反向支付、转售价格维持、产品跳转等典型的药品领域涉嫌垄断行为。

经营者集中方面，2024年1月26日，经修订的申报标准发布，大幅提高了营业额标准。9月14日，新版简易案件申报表和公示表公布，一定程度降低了竞争评估的信息要求。值得一提的是，基于多年经验，总局于12月20日出台详细的《横向经营者集中审查指引》，不但有助于经营者自我评估，也增强了经营者集中审查的透明度。8月16日，总局还发布《违反〈中华人民共和国反垄断法〉实施经营者集中行政处罚裁量权基准（征求意见稿）》，就不具有反竞争效果的“抢跑”案件规定了具

反垄断司法方面，最高院于2024年6月24日出台的《关于审理垄断民事纠纷案件适用法律若干问题的解释》（“新司法解释”）在许多方面有所创新和突破，包含了诸多实践中经常引发争议的复杂程序和实体问题，并大幅减轻原告的举证负担。

此外，中国于2024年8月1日出台《公平竞争审查条例》，首次以行政法规的形式对公平竞争审查进行系统规定。配套机制的创新也为中国的反垄断执法提供了灵活的监管工具。反垄断“三书一函”制度（即《提醒敦促函》《约谈通知书》《立案调查通知书》《行政处罚决定书（经营主体）/行政建议书（行政机关）》）在2024年得到进一步完善，梯次适用提醒敦促、约谈、立案调查、行政处罚或行政建议等手段，丰富了监管举措。

反垄断执法聚焦重点领域，处罚与柔性监管相结合

2024年，中国共查处横向垄断协议和滥用市场支配地位案11件（无纵向处罚案件），涉及燃气、水务、医药、建材、机动车检测、驾校等重点领域。其中，威海水务滥用案还涉及在先的反垄断民事诉讼，体现了执法与司法的衔接。宁波森浦滥用案是中国数据领域第一起反垄断处罚案，体现了中国反垄断执法对数据要素的高度关注。

除行政处罚外，提醒敦促、约谈等柔性手段也在2024年的中国反垄断执法中更高频地使用。例如，总局1月份对5家品牌汽车供应商进行提醒敦促，推动解决车企对下游经销商实施不合理限制等问题。6月，总局对Avanci专利池在汽车无线通信标准必要专利许可过程中存在的垄断风险进行提醒。

经营者集中方面，2024年总局自新申报标准实施后的10个月内共收到申报580件，以简易程序审查的比例近90%，审查平均用时26.6天，简易案件平均用时17.5天，仅1起附条件批准案件（JX金属收购拓自达电线股权案）。境外企业间集中在前3季

反垄断诉讼活跃程度显著提升

根据有关数据，最高人民法院知识产权法庭（“最高法院”）自2019年1月成立6年来共受理垄断民事和行政二审案件282件，其中，2024年1月1日至8月31日受理的案件达111件，这说明2024年中国的反垄断诉讼活跃程度显著提升。

此外，中国的反垄断司法也呈现出多个显著特点：一是合理平衡保护创新与维护竞争的关系，依法改判“稀土永磁材料专利”滥用市场支配地位案；二是原告胜诉率有所提升，在华明案、通用汽车案、壳牌案等多起案件中判定原告胜诉；三是反垄断执法与司法协调衔接进一步加强，例如反垄断后继诉讼在新司法解释和最高法院公布的典型案例中均有所强调，2024年也出现了执法机构对司法案件中涉及的垄断线索积极查处的案例。四是反垄断行政诉讼大量增加，且针对经营者集中审查决定的新型反垄断行政诉讼首次出现。五是检察机关积极开展反垄断公益诉讼，涉及共享单车、燃气、医药等多个行业。

中国反垄断的趋势与展望

随着中国逐步强化竞争政策的基础地位，我们预测未来中国的反垄断将呈现如下趋势：第一，反垄断配套规则将进一步完善和细化，如可能制定非横向经营者集中审查指引、安全港标准等。第二，反垄断执法将继续聚焦医药、平台经济、自然垄断行业等重点领域。跨司法辖区的全球反垄断风险值得关注，即，在其他司法辖区遭遇调查的企业应同步关注中国反垄断风险。第三，处罚与约谈、提醒等柔性执法手段将继续结合发挥梯次化监管作用。第四，反垄断诉讼将迎来新发展，新司法解释可能鼓励更多当事人提起反垄断诉讼，中国法院将继续强化对垄断案件的审理。第五，公平竞争审查与行政性垄断的监管力度将深入推进，加快全国统一大市场建设。

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