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Chinese Antitrust.

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QUOTES

There are trade disputes between countries, this is not unusual, but it is important to follow the rules and protocols when dealing with them... I emphasize the need for all parties to act on the basis of the rules and facts... [in doing so] we will show greater decisiveness and move to action if there are objective reasons for this and we see that other countries do not comply with the rules agreed upon at the international level.

EU Trade Commissioner Valdis Dombrovskis on China's possible response to European restrictive measures ¹

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¹ Источник: <https://www.scmp.com/news/china/article/3249697/eu-says-any-retaliatory-trade-probe-china-must-be-based-facts>

Russian-Chinese memorandum on antimonopoly cooperation

On December 19, as part of a meeting between Premier of the State Council of the People's Republic of China Li Qiang and Prime Minister of the Russian Federation Mikhail Mishustin, SAMR and the FAS Russia signed a Memorandum of Understanding for 2024-2025. Based on this document, the parties will interact and cooperate in the field of antitrust regulation, combating unfair competition and in the advertising field.

Source: https://www.samr.gov.cn/xw/zj/art/2023/art_6b26ab1b23404c169c5b173e57b18c6c.html

Cyber Data Center opened in China

At the end of December, the China Cybersecurity and Big Data Market Regulation Inspection and Certification Center ("Cyber Data Center") became operational. The center is intended to become a supporting structure for ensuring "smart" market regulation, effective cybersecurity audits and a leading organization for certification and control in the field of cybersecurity. Its main functions include studying applicable technology standards and technologies, informatization of market regulation, applied big data analysis and implementation of smart regulation.

Source:

https://www.samr.gov.cn/xw/zj/art/2023/art_337ccedd5f69451d8828bc7250d8f733.html

Antitrust guidance for industry associations

The guidelines, published on January 10th, aim to prevent industry associations from engaging in activities prohibited by China's Anti-Monopoly Law. Industry associations are the link between business and the government, they perform important functions in providing advice, strengthening self-discipline in the industry, promoting industry development and protecting the rights of enterprises. In this regard, their non-interference in market competition seems especially important. The guidance contains 26 points, including: a prohibition on actions that restrict or eliminate market competition, a listing of situations that potentially constitute a violation of the Antitrust Law, a requirement to strengthen the antitrust compliance system, guidance on legal responsibilities and factors taken into account, and a call for cooperation and joint regulatory efforts.

Sources:

https://www.samr.gov.cn/zw/zfxxgk/fdzdgnr/fldzfy/art/2024/art_3ce3a7fec76146cfb8a7927db10683b2.html

https://www.samr.gov.cn/zw/zfxxgk/fdzdgnr/xwxc/art/2024/art_d750c6a6b8634caeacede92147c715c1.html

Criteria for filing M&A applications have been updated

As stated in the press release, the CPC Central Committee and the State Council of the People's Republic of China attach great importance to anti-monopoly work. In conditions of constant economic growth, the current criteria for filing applications for economic concentration seemed to be too low and did not correspond to the objective needs of quality development. The updated document expands market access, reduces transaction costs and provides new impetus for investment, mergers and acquisitions. In the new edition, the criteria are increased as follows:

- 1) the total global turnover of all participants in the transaction for the previous year was increased from 10 billion yuan to 12 billion yuan (\$1.7 billion);
- 2) the total turnover of all participants in the transaction in China over the previous

year was increased from 2 billion yuan to 4 billion yuan;

3) the turnover of at least two parties to the transaction in China over the previous year must exceed 800 million yuan (instead of 400 million yuan previously).

Sources:

https://www.gov.cn/yaowen/liebiao/202401/content_6928415.htm

https://www.gov.cn/zhengce/content/202401/content_6928387.htm

China's first consultation center for antitrust compliance inspections

In the city of Xiamen (southern China), the country's first consultation center for antimonopoly compliance checks on economic concentration transactions has opened. In recent years, large enterprises have carried out many mergers and acquisitions, and in this process they often face antitrust risks, and the new center will help companies reduce costs as much as possible. It provides expert advice from a team of antitrust researchers and lawyers: 10 professional consultants and another 29 volunteers. Volunteers help solve basic issues related to economic concentration transactions, experts deal with more complex difficulties, and for the most complicated cases, the Center requests advice from the Shanghai Market Regulation Authority, which provides advice to enterprises directly via video link.

Source: <https://baijiahao.baidu.com/s?id=1783318284639126370&wfr=spider&for=pc>

Three-year plan for the development of the data industry

China's National Data Administration, created last year to make data a productive factor, has released a three-year plan to use the country's wealth of data to boost the economy. According to the plan, China will formulate more than 300 data application scenarios by 2026 and grow its data industry by 20% annually. This initiative will help "grow" a new driver of economic development. It includes, among other things, mobilizing resources to develop and train China's own AI models. The plan also calls for an influx of private capital into the data industry. In addition, the authorities noted 12 industries where it is necessary to use data more actively: manufacturing, modern agriculture, commerce, transport, finance, IT, etc.

Sources:

<https://www.scmp.com/tech/policy/article/3247423/china-unveils-3-year-data-action-plan-beijing-seeks-boost-growth-through-tech>

https://www.gov.cn/lianbo/bumen/202401/content_6924380.htm

JD.com sues Alibaba for \$141 million for anti-competitive practices

Marketplace JD.com won an antitrust case against its main competitor Alibaba Group: the court decision provides compensation for damages in the amount of \$141 million. The Beijing Supreme People's Court ruled that Alibaba abused its dominant position and forced its suppliers into exclusive cooperation, which caused damage to business activities of JD.com. The plaintiff welcomed the court's decision: in his opinion, Alibaba's actions harmed market competition and violated the rights of brands, sellers and consumers.

Previously, for similar violations, Alibaba also received from the market regulator an antitrust fine in the amount of \$2.8 billion - it became a record in Chinese antitrust practice.

Source:

<https://www.scmp.com/tech/big-tech/article/3246715/chinese-e-commerce-giant-jdcom-wins->

Compliance on platforms during the New Year holidays

In anticipation of the New Year holidays (New Year on January 1st and Chinese Spring Festival on February 10th), SAMR held an administrative compliance workshop for leading retail purchasing and travel planning platforms. During this period, it is especially important to create a calm and safe atmosphere for consumers, and therefore the regulator called on platforms to strengthen regulation, prevent potential risks and protect the interests of users and suppliers. The authorities noted five aspects of compliance:

1) compliance with the responsibility of platforms (publication of platform rules, data verification, increased fines for illegal actions, suppression of the spread of false information);

2) protection of consumer rights;

3) maintaining stable prices for key goods (rice, noodles, oil, vegetables, eggs, milk, local delicacies, entertainment, hotel accommodation);

4) ensuring food safety;

5) preparing a plan to respond to emergency situations using big data (early identification and elimination of risks).

Source: https://www.samr.gov.cn/xw/zj/art/2023/art_1a52958984f44dc8abdcd16276876d3d.html

SAMR reported on consideration of M&A transactions in 2023

To facilitate effective enterprise restructuring and economic transformation, the following results were achieved in 2023:

— changes have been made to the criteria for filing applications when carrying out transactions of economic concentration;

— work has been launched in pilot mode to delegate the consideration of economic concentration transactions to local market regulatory authorities;

— the Rules for Consideration of Transactions of Economic Concentration and the Guidelines for Antimonopoly Compliance of Economic Concentration were published;

— a total of 797 applications were considered, of which 11 were withdrawn by the applicants, and 786 were approved by the regulator (4 with an order, the rest without an order);

— average review time is 25.7 days (0.8 days less than in the previous year).

As statistics have shown, most transactions were carried out by Chinese companies, mainly state-owned. The most popular industry turned out to be the manufacturing sector of the real economy.

Source: https://www.samr.gov.cn/xw/zj/art/2024/art_626627829db34e92901f776931077f4e.html

26th week of China-EU competition policy

In December 2023, SAMR and the European Commission's Directorate-General for Competition jointly hosted the 26th Competition Policy Week, held in a hybrid format. The parties discussed topics such as methods for considering vertical economic concentration, measures of state support for business, a system for ensuring fair competition, etc. They

also expressed their intention to further deepen cooperation in the field of antimonopoly regulation, protect a fair competitive order in the market and promote the sustainable development of mutual trade and economic relationships.

Source: https://www.samr.gov.cn/xw/zj/art/2023/art_5978b667629e4fdca9fb45e879d1b0ea.html

Results of the campaign to improve agreements and rules on Internet platforms

In June 2023, SAMR launched a five-month campaign to create fairer and more reasonable agreements and rules for digital platforms. Analysis and public feedback showed that the main issues were the use of policies and agreements to incentivize consumers to auto-renew their subscriptions, unjustifiably expanding the list of items that cannot be returned without explanation within seven days, and the imposition of unreasonable fees.

Local market regulators advised 854 platforms to carefully review their rules and agreements, helped amend 982 agreements, and recommended changes to 2,698. As a result of the campaign, the activity of suppliers of goods and services on the platforms increased, and the level of satisfaction, happiness and security among the general consumer increased significantly.

Source: https://www.samr.gov.cn/xw/zj/art/2023/art_4ecb06a7bbea4d60a752656ec2599a86.html